

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





34-7

302

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA DISTRICT

No. 22529

United States Court of Appeals  
for the District of Columbia Circuit

UNITED STATES OF AMERICA,  
Appellant

FILED MAR 11 1969

v.

CLIFFORD A. JONES,  
Appellee

*Nathan J. Paulson*  
CLERK

Appeal from the United States District Court  
For the District of Columbia

APPENDIX OF APPELLANTS

Will Wilson  
Assistant Attorney General

William S. Lynch  
Gerald E. McDowell  
Attorneys, Department of Justice  
Washington, D.C. 20530  
Attorneys for Appellant

OF COUNSEL: Beatrice Rosenberg  
Attorney  
Department of Justice

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CRIMINAL NO.

PARTIES		ATTORNEYS		CRIMINAL NO.
UNITED STATES	VS.	U. S. ATTORNEY	BITTMAN, MOORE, MITTLER, NO Dept. of Justice	
CLIFFORD JONES (53)		E. P. Morgan & F. W. Blair 900-17th St., NW	Orig.	10-60
				CHARGE PERJURY (18, USC, 1621)
				BOND
				DATE FILED
PROCEEDINGS				
DATE	PRESENTMENT AND INDICTMENT FILED	(3 Counts)		
1966 Jan 5	APPEARANCE of Austin S. Mittler, Special Attorney, United States Department of Justice, for the United States, filed.			
1966 Jan 14	APPEARANCE of Donald Page Moore, Special Attorney, United States Department of Justice, for the United States, filed.			
1966 Jan 14	APPEARANCE of William O. Bittman, Special Attorney, United States Department of Justice, for the United States, filed.			
1966 Jan 17	APPEARANCE of Edward P. Morgan and Forbes W. Blair entered and filed.			
1966 Jan 18	Recognition in the sum of \$5000.00 taken with M. C. Ryan, Surety, filed.			
1966 Jan 18	Copy of indictment handed to defendant in open Court; Arraigned, Plea Not Guilty entered; Bond set at \$5000.00; Incusbody of counsel until making of bond; Trial date set for 5-23-66; all interlocutory motions are to have been filed and disposed of by 4-18-66. Attorney Edward P. Morgan present.			
	McGuire, C.J. (Reporter-D. Copeland) Cert, filed.			
1966 Jan 26	Motion of Defendant to inspect Minutes of Grand Jury and Points & Authorities in support thereof, filed. Cert, of serv.			
	CONTINUED			



**CRIMINAL DOCKET**

**United States District Court for the District of Columbia**

Supplemental Page No. **L**

United States vs. **CLIFFORD JONES**

Cr. No. **44-66**

Date	Page	Description
1966 Feb 7	7	ANSWER OF GOVERNMENT to Motion of Defendant to inspect Clifford A. Jones' testimony before Grand Jury, filed, Cert. of Serv.
1966 Feb 11	11	Motion of Defendant to inspect minutes of the Grand Jury granted by consent order.
		ORDER that the Government submit to the Defendant a copy of his testimony given before the Grand Jury on 3-17-65, filed. (H)
		Attorney Edward S. O'Neill present. Defendant not present.
		McGuire, C.J. (Reporter-D. Copeland)
1966 Mar 28	28	Motion of deft. for issuance of subpoenas duces tecum; P & A in support thereof; filed. C/S
		Motion of deft. for transfer; P & A in support thereof; Affidavit and letters, filed. C/S
		Motion of deft. for continuance and memorandum in support thereof, filed. C/S
		Motion of deft. to dismiss indictment or counts thereof and memorandum in support thereof, filed. C/S
1966 Apr 6	6	MOTION OF GOVERNMENT for extension of time to answer defendant's motions, heard and granted.
		ORDER that the Government must file all answers to the defendant Clifford Jones' motions on or before 4-14-66 and that the motions be continued for disposition until April 18, 1966 at 10:00 a.m., or at another date convenient to this Court, filed. The Court sets the date of 4-22-66 for the hearing of the motions. (H)
		Defendant not present.
		McGuire, C.J. (Reporter-D. Copeland)
1966 Apr 6	6	Motion of Government for extension of time to answer Defendant's Motion, filed.
1966 Apr 14	14	GOVERNMENT'S Memorandum in opposition to Motion for issuance of subpoenas duces tecum, filed. Cert. of Serv.
		GOVERNMENT'S Memorandum in opposition to Defendant's Motions for transfer or in the alternative a continuance, filed. Cert. of Serv.
		GOVERNMENT'S Memorandum in opposition to motion to dismiss indictment or counts thereof, filed. Cert. of Serv.
		GOVERNMENT'S Memorandum in opposition to Defendant's Motion for a Bill of Particulars, filed. Cert. of Serv.
		GOVERNMENT'S Memorandum in opposition to Defendant's Motion for discovery pursuant to Rule 16, filed. Cert. of Serv.
1966 Apr 16	16	Transcript of Proceedings, 1/18/66, filed (Court's Copy) (Reporter-Copeland)

CONTINUED

## United States District Court for the District of Columbia

United States re. CLIFFORD JONES

Cr. No. 40-66

Supplemental Page No. 2

Date		Proceedings
1966 Apr 20		Reply to Government's Memorandum in opposition to defendant's motion for transfer or in the alternative a continuance and affidavits (2) in support thereof, filed. Cert. of Serv.
1966 Apr 22		Motion of deft. for continuance of trial date, heard and granted -- case to be set after Robert G. Baker case, Crim. No. 39-66.
		Motion of deft. for transfer, heard and denied without prejudice --- filed prematurely. (ORDER to be presented by defense counsel.) Cert. filed.
		Affidavit of Robert L. Reid as to criminal calendar in the District of Nevada, filed.
		Attys. Edward P. Morgan and Forbes Blair present.
		CURRAN, J. (Rep. - Joan Blair)
1966 Apr 26		Motion for issuance of subpoena Duces Tecum;
		Motion to dismiss indictment or counts;
		Motion for Bill of Particulars;
		Motion for Discovery and Inspection.
		ORDER denying without prejudice the motion for transfer under amended Rule 21(b) as being prematurely made; that instant case be set down for trial at a time subsequent to the trial in Criminal No. 39-66 -
		U. S. vs. Robert G. Baker, filed. CURRAN, J. (N)
		Attorney Edward P. Morgan present.
		CURRAN, J. (Reporter-Barbara Williamson)
1966 Apr 27		Transcript of proceedings, 4-22-66, filed.
		Pages 1-22, 4-22-66 (Motion for transfer or continuance) filed.
		(Court Copy) (Reporter-Blair)
1967 Feb 14		Motion for consideration of pending motions restricted to motion for continuance or, alternatively, motion for transfer, and memorandum in support thereof, filed. Cert. of Serv.
1967 Feb 17		Motion of Defendant to continue and to transfer case to the District of Nevada or to somewhere therabouts heard, argued and TAKEN UNDER ADVISEMENT; Defendant on Bond;
		Attorney Edward P. Morgan present.
		GASCH, J. (Reporter-D. Sweet) Cert. filed.
1967 Mar 1		Motion of defendant to suppress evidence and for other relief; Affidavit of Clifford A. Jones; Exhibits (3); Affidavit; Exhibits (1); Exhibits A through E; and Exhibit (1); filed; P & A filed
		(CONTINUED)



CRIMINAL DOCKET

United States District Court for the District of Columbia

Supplemental Page No. 3

United States vs. CLIFFORD JONES

Or. No. 40-66

Page Number

Date	Description
1967Mar 8	Supplement to Motion to suppress evidence and for other relief; Affidavit, Exhibits A, B & C, filed. C/S
1967Apr 11	OPINION denying motion for continuance and Denying motion for transfer, filed
	OASCH, J.
1967Jun 9	TRANSCRIPT OF PROCEEDINGS of February 17, 1967, Vol. 1, Pages 1 to 57, filed. Court Copy (Reporter- D.F. Sweet)
1967Sep 14	Certified copy of ORDER entered in United States Court of Appeals, 9-13-67 for the TRANSMITTAL of Criminal No. 40-66 including the reporter's transcript of 2-17-67 as promptly as possible for use in considering petition for issuance of Writ of Habeas Corpus. (Appeals No. 20,951)
1967Sep 14	Receipt from U. S. Court of Appeals for delivery of Criminal file including 2 Volumes Reporter's Transcripts, pursuant to U. S. Court of Appeals order in No. 20951, filed
1968Mar 6	Certified copy of order entered in U.S. Court of Appeals, 3-5-68, granting defendant motion for stay pending application for certiorari, filed
1968Apr 26	Copy of letter from Supreme Court 4-24-68 advising that certiorari was Denied.
1968May 16	Govt's mo to specially designate a U.S. District Judge to hear all motions & the trial & have case set for trial. C/S
1968May 17	Renewed mo for transfer & P&A and Attachment 1 & 2
1968May 22	Supplement to Govt's memo in opposition to deft's mo for discovery & in support of Govt's mo for discovery. C/S
1968May 23	Reply to Supplement to Govt's memo in opposition to deft's mo for discovery & in support of Govt's mo for discovery C/S
1968May 24	Supplement to Motion to dismiss Indictment or Counts - P & A and Attachment. C/S
1968May 29	Orif. record incl. 2 vols. of trans, returned from H&A
1968May 29	Order assigning case to Judge Gerhard Gesell for all purposes. CURRAN, C. J. (R)
1968May 31	Govt's Memo in opposition to deft's renewed mo for transfer. C/S
1968Jun 1	Supplement to MO. for Discovery & Inspection, P&A C/S
1968Jun 20	Govt's memo in opposition to deft's supplemental motion for discovery and inspection
Jun 26	Waiver by Clifford Jones to right to be present at all proceedings.
	Govt's response to deft's Motion to Suppress.
	Memorandum of Govt in support of response to deft's motion to suppress; ex. filed
	Affidavit of Gerald E. McDowell.
	Mo for transfer renewed; oral mo for waiver of jury and mo to dismiss -- heard and denied; Mo for discovery and inspection, Mo for issuance of subpoena duces tecum, Mo for Bill of Particulars, and Mo of Govt for production -- heard and granted in part and denied in part. (Order to be presented) (Per: Patton)

NOTED

## United States District Court for the District of Columbia

United States vs. CLIFFORD JONES

Cr. No. 40-66

Supplemental Page No. 4

Date		Proceedings
1968Jun 28		Comments in opposition to procedure proposed in Govt Memorandum and attachment.
1968Jul 1	1	Reply to Govt's response to deft. Motion to suppress, Attachment c/s
1968Jul 9	9	Further pretrial; hearing on Motion to suppress set for 8-5-68. Edward P. Morgan, Esq. (Rep-Watson)
1968Jul 16	16	Order denying defts mo for transfer; mo for waiver of jury trial and mo to dismiss Counts 1, 2 and 3:
		Defts mo for disc and insp granted in part and action on other aspects deferred;
		Mo for iss. of subp. does tecum denied w/o prejudice w/right to renew after hearing mo to suppress;
		Defts mo for Bill of Part. granted in part and denied in part; Items 16, 17, 18 and 19 are reserved for dispo. at future pretrial conf.
		Mo of Govt for disc. & inspec. under Rule 16(c) granted. (N)
		GESELL, J. (Rep- I. Watson)
1968Jul 30	30	TR PRO of 6-25-68; pages 1-151, Clerk's Copy; Rep-I. Watson
1968Aug 5	5	Mo to suppress heard in part and continued 8-6-68; Edward P. Morgan, Esq.
1968Aug 6	6	GESELL, J. (Rep.-Watson, Harper, Horning, Watson, Malier) C/P Micro. 8-7-68
		Hearing on motion to suppress resumed; contd until 8-7-68.
		Appearance of Forbes W. Blair, Esq. as co-counsel for deft.
1968Aug 7	7	GESELL, J. (Rep-I. Watson; P. Harper; O. Horning; Iva Watson)
		Hearing on mo to suppress resumed; argued and taken under advisement; both counsel to submit briefs by 8-22-68 and reply briefs by 8-30-68 tentative trial date set 10-15-68. Edward P. Morgan, Esq. and Forbes W. Blair, Esq.
1968Aug 22	22	GESELL, J. (Rep- I. Watson; P. Harper; O. Horning; ) C/f
1968Aug 22	22	Govt. post-hearing response in opposition to deft mo to suppress c/s
1968Aug 30	30	Memo in support of mo to suppress evidence, Attachment 1 c/s
		Reply of Govt to Memorandum in opposition to deft. Memorandum in support of Mo to suppress evidence.
1968Aug 30	30	Reply of Deft to Govt Brief in opposition to deft Motion to suppress and attachment filed. (Taken to Judge Gesell)
1968Sep 30	30	Memo opinion granting mo to suppress. (Order to be presented)
1968Oct 16	16	GESELL, J. (Rep-J. Blair)
1968Oct 28	28	Order suppressing certain evidence. (N) GESELL, J.
		NOTICE OF APPEAL filed by Government from Order granting Suppression.
		Copy of docket entries to USCA & U.S. Atty. Copy of notice to USCA, U.S. Atty and atty.

II

MEMORANDUM OF COURT  
SUSTAINING MOTION TO SUPPRESS



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA )  
 )  
 v. ) Criminal No. 40-66  
 )  
 CLIFFORD A. JONES )

MEMORANDUM OPINION

This is a perjury case based on allegedly false statements made before a grand jury in this jurisdiction. Defendant has moved to suppress evidence of certain of his telephone calls and other private conversations that were admittedly intercepted by the Government through various means and under circumstances later to be described. After a full evidentiary hearing on the motion, briefs were exchanged and the issues were argued to the Court. The Court has concluded that the motion to suppress must be granted. The factual background that follows is essential to a consideration of the applicable authorities.

I.

The facts in this case are not unduly complex. There were three persons whose conversations were monitored by the Government: defendant Jones, Wayne Bromley, and Robert G. Baker. All three were attorneys-at-law. The defendant lived in Las Vegas, Nevada, and the other two men lived in Washington, D. C. They were all well acquainted with each other and had had some business dealings with each other.\*/

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\*/ The principal witnesses on this motion were Jones, Bromley, Moore (one of the Government prosecutors), and Sandground (Bromley's attorney). The first two mentioned were parties in interest. Moore was a careful witness and candid, although many facts in the area of his testimony were known by him only secondhand and his account was admittedly spotted with hearsay. Sandground testified after Bromley waived the attorney-client privilege and his testimony has generally been accepted where conflicts in testimony appear.

The course of events begins with Bromley's appearance before a District of Columbia grand jury investigating Baker in October of 1964. The Government considered his replies at that time concerning his relationship with Baker false and he was subpoenaed to appear again in February of 1965. Service of this new subpoena caused Bromley to retain an attorney, Mark Sandground, to advise him.

Sandground immediately met with Bittman and Moore, the Government attorneys, in order to postpone Bromley's appearance so that he would have time to determine the extent and nature of the difficulties his client faced and to decide what measures should be taken. The requested postponement was granted. Bittman and Moore, in a series of meetings with Sandground, thereafter discussed possible charges against Bromley. They made it clear that Bromley faced charges of income tax evasion and perjury before the grand jury as well as charges arising out of the whole "Bobby Baker matter." The Government attorneys emphasized the seriousness of these matters and revealed information to suggest the thoroughness of their investigation to date.

Moore and Bittman also told Sandground, who in turn told Bromley, that although they had sufficient evidence against Baker to indict him for tax evasion, they needed help in other Baker matters. It was indicated that Bromley's "cooperation" would be "appreciated" by the Government. Sandground got the message. He considered Bromley a likely defendant and saw "impending disaster" for his client. Sandground advised Bromley that he was in extreme difficulty, that he was a likely candidate for indictment, and that the best course for him to follow was to cooperate fully with the Government attorneys in the hope of some leniency along the

way. Bromley decided to do this and thereafter he and Sandground talked with the prosecution six days a week and often twice a day in different places. These meetings were at Sandground's home, at his office, and at the Department of Justice. At these and subsequent meetings between the Government lawyers and Bromley, no promise was ever made that if Bromley gave evidence against Baker he would not be prosecuted. When immunity was requested for Bromley it was not granted. But it is a fact that Bromley cooperated and that he was never indicted.

On February 23, after numerous meetings with the Government attorneys, Bromley appeared a second time before the grand jury, repudiated his previous testimony, and told what the Government now describes as the "truth." Part of Bromley's story was that Jones knew that Bromley received money from First Western Financial Corp., which he passed on to Baker, keeping none for himself, i.e., he was a conduit for Baker. Later, on March 17, Jones appeared before the grand jury in response to a subpoena duces tecum. He was questioned on a wide variety of matters, including his relationship with Bromley and Baker. During this questioning Jones denied having caused the issuance of checks of First Western Financial Corp. to Bromley as a conduit to Baker. Jones, an officer of First Western, said he knew Bromley as a lobbyist retained by First Western and understood money was to go directly to Bromley for lobbying fees and that part was intended for politicians who could be helpful. None of the money was to go to Baker.

Acceptance of Bromley's contrary version of the conduit facts was very important to him. The payments to Bromley created income tax evasion problems for him unless he could show to the satisfaction of the Government that all the

money was intended for someone else and just passed through him as a conduit. In short, to minimize the threat of possible indictment, he had to prove that he was now reliable and that Jones' version was false.

Immediately following his grand jury appearance, Jones returned to his friend Fred Black's office hotel suite at the Sheraton-Carlton, where he stayed regularly when in town. He recounted to Black's secretary Dee Kaufman, a friend of Bromley, what had occurred before the grand jury. Jones asked her to advise Bromley what he had said about Bromley during his testimony. Jones indicated he did this because he thought Bromley should know that the grand jury was investigating transactions in which Bromley was involved.\*/ A few days later when Jones telephoned Dee Kaufman on another matter she said that Bromley was hurt that Jones had not called him personally to discuss his testimony. This prompted Jones, who lived in Las Vegas, to telephone Bromley in Washington on the evening of March 22.

This call was not monitored by anyone. Although Bromley's recollection is vague, it appears that Jones related to Bromley in more detail the questions and answers that came up before the grand jury. Jones did not know Bromley had been before the grand jury in February and Bromley did not tell him. Significantly, Bromley did not disagree with the version of the payments which Jones said he had given in his testimony before the grand jury. When their conversation ended, neither party apparently expected the other to call back.

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\*/ The Federal Rules of Criminal Procedure do not prohibit or prevent a witness from disclosing the nature, content and extent of his testimony before a grand jury. See Rule 6.

Bromley immediately telephoned Sandground and told him that he had had a telephone call from Jones. Sandground apparently felt from information given him by Bromley that Bromley believed Jones was trying to influence Bromley to tell a false story. Indeed, Bromley may have so characterized the call. In any event, Sandground relayed this impression to the Government attorneys. None of the witnesses, other than Jones, could give a detailed account of this call and Jones' account does not support the impressions Sandground got from Bromley.

After Sandground reported the incident to Bittman and Moore, the latter checked with his immediate superior and then suggested Bromley make a return call to Jones which the Government would monitor. There had been prior conversations concerning monitoring between Sandground and the Government attorneys but this was the first time the Government attorneys decided to follow this dangerous course. The Government attorneys already "believed Bromley absolutely," felt he "could be trusted," and "was on the level" -- they accordingly felt justified in using him in an attempt to incriminate Jones as well as to discover if Jones was attempting to obstruct justice and to confirm Bromley's reliability as an informer.

The Court repeatedly pressed for an explanation of the reason for the immediate reaction to Jones' call both by Bromley and the prosecutors. None was obtained. Both Jones and Bromley had testified. Bromley must obviously have been prepared to stick by his version because he reported the call from Jones. He was not in physical danger. Jones had no leverage over him. Bromley cannot explain why he did not disagree with Jones when he heard Jones' version of the transactions. Jones was not a suspect in the Baker inquiry but he had been a perjury suspect in the eyes of the

Government from the date of his testimony. Under all these circumstances it cannot be doubted that the Government's primary interest in conducting the subsequent surveillance of conversations between Jones and Bromley was to obtain corroboration of perjury. Indeed, this is not seriously contested by the Government.

Sandground, Moore, Bittman and an employee of a court reporting firm went the same evening to Bromley's home in Maryland. At about midnight, Bromley telephoned Jones on the false pretext that he had not been able to talk earlier because he had had guests. Removal of the mouth-piece from the extension phone in the kitchen enabled the reporter listening in to take down the conversation between the two participants unbeknownst to Jones. Bromley had first signed a written consent to such monitoring after consulting with Sandground.

Before the conversation started, one of the Government attorneys told Bromley to say to Jones that he had not been before the grand jury. This was wholly false. Bromley did so and continually asked for Jones' guidance as to what he, Bromley, should tell the grand jury. Bromley was persistent in his lying attempts to make Jones incriminate himself, as the following excerpts from the transcript of the interception show:

Mr. Bromley: I said you know --

Mr. Jones: Yes.

Mr. Bromley: -- Now it was supposed to have been handled, because -- Look, as I told you earlier, I haven't actually been before the Grand Jury and I am wondering what I am going to say, if I am called.

Mr. Jones: That is right.

Mr. Bromley: I am getting right disturbed about it, because I haven't talked with --

Mr. Jones: Mm-hm.

Mr. Bromley: -- our friend, and I just don't know how[,] you know[,] how this whole thing is going to be handled and it's really got me over a barrel.

Mr. Jones: Well --

Mr. Bromley: Plus the fact that I have to get my returns in less than a month, because last year, as I told you, I didn't get mine in until December 1st and they really haven't had time to check me out on it. And I normally run into trouble and I want to know how to handle this one.

\* \* \*

Mr. Bromley: No, I don't know. I have been under subpoena six weeks or more and I don't know why I haven't been called. . . . There is a bunch that haven't been called yet. I guess they are taking their time getting around to us.

\* \* \*

Mr. Jones: What's that?

Mr. Bromley: I said I would like to bring Bobby with me so we could go over this thing.

\* \* \*

Mr. Jones: There was nobody else present, but the two of us, was there, just the two of us?

Mr. Bromley: Cliff, are you asking me, or are you telling me?

Mr. Jones: I am telling you.

Mr. Bromley: O.K. All right.

Mr. Jones: That part of it --

Mr. Bromley: Yes. O.K.

On the evening of the 23rd, Jones again telephoned Bromley. Jones says he did this to provide Bromley with certain income tax information which had been requested by Bromley in the first intercepted call. This conversation was not monitored. Bromley claims Jones also wanted him to set up a meeting between Bromley, Baker and Jones to discuss



Bromley's testimony. Jones denies this and says the idea of a meeting was entirely Bromley's. In any event, Bromley reported his version of this telephone call to the Government attorneys, again through Sandground.

It was decided that Bromley should telephone Jones and Baker and attempt to arrange such a meeting and that the Government should monitor the telephone calls. This was again at the Government's suggestion and with its active encouragement. There were no rules or regulations of the Justice Department covering a matter of this kind. Moore and Bitzman researched some of the relevant legal authorities on electronic surveillance. It seemed safe to them to go ahead. Moore and Bitzman asked for authority and their superiors authorized further interceptions of phone calls which Bromley was to make.

Bromley, Sandground, Moore and Bitzman, along with an FBI agent, were at Sandground's office on March 24. Bromley again signed a written consent to the monitoring of phone calls from him to Baker and to Jones concerning the proposed meeting. The agent attached to the telephone an induction coil which was connected to a tape recorder in order to record the telephone calls. A series of calls were then monitored on the 24th and 25th, as a result of which a meeting between Bromley, Baker and Jones was arranged for Friday, March 26 in Los Angeles.

After obtaining the authorization of the Attorney General and the formal consent of Bromley for an electronic surveillance of the proposed meeting, further plans for monitoring were made. A transmitter was strapped to Bromley's belly by Government representatives in Sandground's office at Washington on the afternoon of the 26th. He was instructed as to its use. This device could be turned on and off by



Bromley as he desired. The Government attorneys suggested that Bromley wear this concealed transmitter to Los Angeles so that he could broadcast the meeting to strategically placed receiving units the Government planned to set up there. The reason this was done in Washington was because Baker was expected to meet Bromley at the airport in Los Angeles.

Later that afternoon Bromley and Sandground flew to Los Angeles. Bromley's flight was paid for, as he had requested, by Jones. The Government paid his other expenses. The Government had asked Sandground to accompany Bromley and reimbursed him for his travel and out-of-pocket expenses. Moore took another flight to Los Angeles, rendezvoused with numerous Government attorneys and agents there, and made plans for monitoring the expected meeting between Bromley and Jones. Nine or ten people participated in the Los Angeles overhearing, including Assistant United States Attorneys and Narcotics Bureau agents. No representative of the FBI was involved.

Baker did not meet Bromley at the airport. The first transmission was a message from Bromley merely stating that he had had the transmitter off and would keep it off until the meeting began. Later that night at approximately 10:00 o'clock, transmission again began. A conversation between Jones, Bromley and Baker was broadcast from Jones' hotel suite. The three men had withdrawn into the bedroom of Jones' suite leaving behind Baker's female companion in the living room in order to assure their privacy. The subsequent conversation was monitored by the Government agents who had receivers in nearby hotel rooms capable of picking up the signals from the transmitter taped to Bromley's stomach. Unlike the transcripts of the previous interceptions, the

transcripts of this surveillance are incomplete due partly to the faulty operation of the broadcasting system itself. Some conversations between Jones and Bromley which occurred after the meeting broke up were not overhead, possibly due to the fact that Bromley had again turned off his transmitter. Jones had no knowledge he was broadcasting through the device or that the Government was overhearing all or part of his conversation with Bromley.

The Government asserts that as far as this indictment is concerned, no significant leads were obtained from any of these monitorings. Nor were these transcripts brought to the attention of the grand jury. Their only use was as a basis for questions asked Bromley upon his subsequent appearance before the grand jury when the indictment of Jones for perjury was considered. The Government's purpose, however, is to offer the intercepted conversations in evidence at Jones' trial through the testimony of its representatives who overheard and transcribed both the various telephone calls and the hotel meeting. The interceptions will be relied on as corroboration of the alleged perjury.

## II.

Many different grounds have been urged in support of the motion to suppress. The central and decisive issue, however, is whether Jones' rights under the Fourth Amendment to the Constitution which protects persons against governmental intrusion by unreasonable searches and seizures were infringed because the Government intercepted certain of his conversations with Bromley. The constitutional requirements applicable to governmental covert interceptions of conversations were recently set forth in Katz v. United States, 389 U.S. 347 (1967), which reiterated that "the Fourth Amendment governs not only the

seizure of tangible items, but extends as well to the recording of oral statements, overheard without any 'technical trespass under . . . local property law.' Silverman v. United States, 365 U.S. 505, 511." 389 U.S. at 353.

Starting with this unambiguous premise, the holding in Katz, discussed in four different opinions on the majority side and one dissent, must be applied as against the facts in the instant matter. In Katz it appears that agents of the Federal Bureau of Investigation, having probable cause and acting in a circumspect manner but without prior judicial approval, placed an electronic listening device on the outside of a public telephone booth and intercepted telephone conversations which defendant made from the booth to others without the consent of the defendant or any of the other parties to the conversations. The Court rested its decision squarely on the lack of prior judicial control, no warrant having been obtained, and held that on the facts presented antecedent justification before a magistrate was central to a preservation of the Fourth Amendment guarantees. Accordingly, defendant's conviction based on the electronic surveillance was reversed.

The opinions in various ways emphasized that the Fourth Amendment protects people, not places, and that the Amendment is designed to preserve privacy against the "uninvited ear" of governmental intrusion. Governmental interceptions of private conversations without prior judicial control are now per se inadmissible in evidence in a federal court and must be suppressed where timely motions are filed:

Searches conducted without warrants have been held unlawful 'notwithstanding facts questionably showing probable cause,' Agnello v. United States, 269 U.S. 20, 33, for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police. . . .'

Wong Sun v. United States, 371 U.S. 471, 481-482. 'Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes,' United States v. Jeffers, 342 U.S. 48, 51, and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.

It is difficult to imagine how any of those exceptions could ever apply to the sort of search and seizure involved in this case. Even electronic surveillance substantially contemporaneous with an individual's arrest could hardly be deemed an 'incident' of that arrest. Nor could the use of electronic surveillance without prior authorization be justified on grounds of 'hot pursuit.' And, of course, the very nature of electronic surveillance precludes its use pursuant to the suspect's consent. Katz v. United States, 389 U.S. 347, 357-358 (1967) (footnotes omitted).

Admittedly, Katz involved governmental interception without the knowledge or consent of any party to the conversations monitored. The Government vigorously argues that in the present case Bromley voluntarily consented and the interceptions took place with his full knowledge and approval, given after consultation with his attorney. Thus it is urged that the rule of Katz is not applicable to consensual surveillance.

It should first be noted that the Opinion of the Court in discussing exceptions to the warrant requirement made no reference to consensual monitoring; in fact the last sentence of the above quotation clearly precludes the existence of any exception for consensual surveillance.\*/ Apart from the holding and strong unequivocal language of Katz, it is

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\*/ There is not unanimity as to the effect of Katz in this particular regard. Indeed, Justice White in a footnote to his concurring opinion purported to preserve consensual surveillance against the thrust of the case but the other majority opinions made no reference to the matter and earlier decisions suggesting the contrary appear to have been overruled sub silentio.

particularly significant in this context that the Court there makes approving reference to Osborn v. United States, 385 U.S. 323 (1966), with respect to the essentiality of antecedent justification.<sup>\*/</sup> Osborn is a case where a paid Government informer tape recorded conversations between himself and the defendant in order to corroborate his allegation that the defendant was endeavoring to employ him to bribe a prospective juror. In other words, Osborn is a case involving monitoring with the consent of one party. However, there was also a prior judicial determination of the reasonableness of the search and seizure of the defendant's statements. It was this latter condition upon which the Supreme Court primarily relied to affirm the conviction in Osborn and it was definitely this latter condition upon which the Supreme Court placed its emphasis in Katz. Thus any distinction which might be drawn between consensual monitoring and third-party monitoring has no constitutional significance as far as the Fourth Amendment privacy concept is concerned.

Assuming for a moment that Bromley may be said to have consented as a matter of law, it is clear he had no authority and did not of course even purport to consent on behalf of Jones, who at all times was wholly ignorant of the Government activities. Under the combined rationale of Katz and Johnson v. Zerbst, 304 U.S. 458 (1938), it is difficult to see how Bromley's conduct, whatever it was in this regard, could possibly have constituted a waiver of the constitutional rights of Jones. Only a magistrate could give the authorization to infringe Jones' Fourth Amendment rights under the circumstances shown by this case. The rationale of Katz permits no other conclusion, as both the Seventh Circuit and

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<sup>\*/</sup> See also Berger v. New York, 388 U.S. 41 (1967).

the Tenth Circuit have since concluded. Doty v. United States, \_\_\_ F.2d \_\_\_, 3 Cr. L. R. 2220 (10th Cir. 1968); United States v. White, \_\_\_ F.2d \_\_\_, 3 Cr. L. R. 2005 (7th Cir. 1968), petition for rehearing en banc granted.<sup>\*/</sup>

In holding that the rationale of Katz applies in a case where one party to a private conversation consents to the Government's interception of the conversation, the Court does not purport to hold that in fact Bromley voluntarily consented in this instance. Indeed, the contrary appears to be the case. Consent, as a matter of law, means something more than a willingness to cooperate or a formal document expressing consent. Surely a realistic rather than a formalistic meaning of consent is now required where the suggestion is that an exception should be carved out from the stringent, all-embracing constitutional prohibition of Katz. Consent must be wholly voluntary in fact and not merely an acquiescence coerced by the constant presence of the Government representatives, coupled with such fearful consequences as Bromley clearly envisaged if he did not go along -- indictment, loss of his job, and the eventual foreclosure of the mortgage on his home.<sup>\*\*/</sup> The wise, experienced advice of his attorney, Sandground, given these stark premises, was the advice of necessity which adds nothing to the involuntary nature of Bromley's capitulation. Bromley, required to pass between Scylla and Charybdis, had no choice. The rock and whirlpool were equally dangerous and under the

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<sup>\*/</sup> Dancy v. United States, 390 F.2d 370 (5th Cir. 1968), takes the opposite view from that of the other two circuits, but the Court has noted the dissent in that case of Fahy, J., sitting by designation from the District of Columbia Circuit.

<sup>\*\*/</sup> See, on the question of voluntary consent, the standards set for this jurisdiction in United States v. Laughlin, 223 F. Supp. 623 (D.D.C. 1963) and United States v. Laughlin, 222 F. Supp. 264 (D.D.C. 1963).



circumstances he could not act voluntarily and give that degree and kind of consent which might otherwise be taken by some to justify an exception to be carved out of Katz\*/

The instant case demonstrates that judicial supervision and control of monitoring is a prerequisite in all situations. Apparently the Department of Justice had no specific written rules governing the circumstances and manner in which surveillance and interceptions of this type could occur. The case was handled by special prosecutors reporting directly to the Assistant Attorney General in charge of the Criminal Division. The agent of the Federal Bureau of Investigation in charge of the Bureau's phase of the inquiry was purposely kept ignorant of the surveillance activities because the prosecutors felt he might have to testify. The Federal Bureau of Investigation was asked to participate in the Los Angeles venture but Mr. Hoover refused. The Department then brought in agents of the Narcotics Bureau of the Treasury Department who were apparently all too eager to experiment with a new electronic gadget which it also appears they did not fully know how to operate. While the special prosecutors obtained formal clearances from their superiors, they ran the show. Under these circumstances it is not surprising that matters got out of hand and the entire experience serves to underline the wisdom of an all-inclusive rule such as appears to have been laid down in Katz.

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\*/ Under this analysis it is immaterial whether the formal consent provisions of the Federal Communications Act, 47 U.S.C. § 605, or newer provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2511, enacted subsequent to the indictment, apply in whole or in part. These statutes also depend upon a voluntary consent and in its absence provide no support for the Government's position under the facts of this particular case.

The monitoring of the various conversations between Bromley and Jones without prior magistrate approval violated the Fourth Amendment and any resulting recordings must necessarily be suppressed.

III.

This matter should not rest solely on these constitutional principles. Suppression is also necessary for a more immediate and equally essential reason. The Court must invoke its supervisory powers as well as suppress this effort to import manufactured evidence into this case. A member of the bar has been encouraged by the Government to elicit incriminating statements from the defendant in conversations which the Government has made elaborate plans in advance to overhear surreptitiously. This lawyer was persuaded to collaborate with the Government, was given expense money, and asked to induce incriminating statements by lies and use of his special relationship of trust. He was not a neutral bystander. His own involvement with the law depended to some considerable degree upon his ability to "bell the cat."

The Government now says that its overhearings gathered in this fashion should be admitted in proof of the perjury charge against Jones. In good conscience this cannot be permitted. The federal courts have a continuing and exacting responsibility to maintain the highest standards of law enforcement and must not permit the integrity of their



fact-finding processes to be demeaned. A breakdown in standards is rare and is apt to arise under the stress of the moment, particularly where the pressures of a major prosecution attracting wide public attention place an undue emphasis upon the necessity of the prosecutor showing results. Unfortunately this appears to be such a case. While the prosecution could not have clearly anticipated the later rulings of the Supreme Court, there is not the slightest excuse for what occurred here in the zeal of the chase.

There are, of course, many instances where the Government does and properly should make use of informers. They are an unpleasant but inevitable aspect of law enforcement. When the informer, however, is a member of the bar who stoops to such deceitful conduct at governmental urging and with governmental financial support in an effort to induce unguarded statements from an acquaintance and thus reinforce his own efforts to escape indictment, the Government obviously overreaches.

Evidence so manufactured cannot be admitted in a perjury case for to permit its acceptance would be contrary to elementary standards of fairness. Perjury is an offense which traditionally has had the highest standards of proof to prevent the all too real possibility of a miscarriage of justice which is constantly present in cases of this type. Thus a perjury case is governed by the "two-witness rule" which is expressed in the following standard instruction upheld by a number of cases in this jurisdiction. It reads as follows:

The uncorroborated testimony of a single witness is not sufficient to establish the falsity of the statement of the defendant under oath. If the Government relies on the testimony of a single witness to prove the falsity of the defendant's statement, it must

present trustworthy evidence supporting the testimony given by the witness. Unless the Government has proved beyond a reasonable doubt the falsity of the statement of the defendant under oath, corroborated in the manner described, and has proved beyond a reasonable doubt every other essential element of the offense, you must find the defendant not guilty.

When Jones appeared before the grand jury he was asked several questions clearly prearranged and geared to lay the basis for perjury if he contradicted Bromley, who had already testified. Jones testified differently than Bromley. To indict Jones, however, corroboration was needed. The Government made Bromley its agent. The Government interceptions were undertaken at the instance and urging of the Government primarily to get an essential element of proof of the perjury offense, that is, to manufacture corroboration.

Whatever may be the proper use of informers in other connections, the Government in a perjury case cannot use someone in a position of trust to invade private areas supported by overhearing devices or techniques in the hope that that person's relationship will enable him by trick and lies to force the suspect to reveal to the Government's uninvited ear words that may then be said to be suggestive and accordingly put in evidence as an essential element of the offense to be charged.\*/ This goes too far. It borders

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\*/ Numerous cases have been cited by the Government but they do not state the law applicable to this motion. Hoffa v. United States, 385 U.S. 293 (1966), and Lewis v. United States, 385 U.S. 206 (1966), are not cases involving electronic or telephone interceptions and the informer was allowed to testify. On Lee v. United States, 343 U.S. 747 (1952), involved electronic surveillance at a time when the Supreme Court had not held the Fourth Amendment applicable to seizure of words, a result first suggested in Silverman v. United States, 365 U.S. 505 (1961), and when Olmstead v. United States, 277 U.S. 438 (1928), and its concern with doctrines of trespass, now overruled by Katz v. United States, 389 U.S. 347 (1967) was the law. Lopez v. United States, 373 U.S. 427 (1963), involved use of an electronic device by an acknowledged Government agent who was being offered a bribe and stands on its own special facts. Rathbun v. United States, 355 U.S. 107 (1957), a consensual overhearing case, was not considered in (footnote continued)

on entrapment. See Sherman v. United States, 356 U.S. 269 (1958); Sorrells v. United States, 287 U.S. 435 (1932). None of the cases on which the Government relies involve such a blatant, planned breach of an individual's privacy and trust. Federal courts will lose their independent integrity if they permit the truth-finding process to be undermined by practices such as these which are inherently offensive to the fair administration of justice.

IV.

In view of the foregoing, a serious question arises as to whether, and, if so, to what extent, Bromley may testify concerning his intercepted conversations with Jones. It is significant that Bromley had no precise recollection of the crucial telephone call from Jones that preceded the first interception. Similarly, when asked about conversations with Jones during the Los Angeles meetings his recollection of the unrecorded portions of the admittedly garbled and incomplete transcript was practically nonexistent. Bromley exhibited all of the testimonial characteristics of a cooperating informer who has repeated his tale so frequently that he automatically responds without any true ability to differentiate between the desired version of events and his recollection of the same events. Even under normal circumstances the testimony of an admitted perjurer should be received with caution and scrutinized with care.

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(footnote continued from preceding page)  
constitutional terms and, in any event, cannot withstand the broad ruling in Katz. Osborn v. United States, 385 U.S. 323 (1966), as noted previously, has been favorably referred to in both Katz and Berger v. New York, 388 U.S. 41 (1967), with respect to the judicial search warrant issued there; in neither case was consent by one of the parties in Osborn mentioned.

While the question of Bromley's credibility is ultimately one for the jury, the Court has the duty to keep from the jury any testimony which is based on Bromley's reliance on the Government interceptions, testimony that is nothing more than a regurgitation of the illegal transcripts themselves. This is particularly important in this instance because the case against Jones insofar as it rests on the interceptions is based on inference and innuendo. The intercepted statements of Jones are not flatly incriminating and their significance depends largely on other circumstances, the tone used and the complete version and context in which his statements were made.

Accordingly, the Court has determined that in the event the Government proposes to interrogate Bromley concerning any of the intercepted conversations, an inquiry should first be held, out of the presence of the jury, to determine whether Bromley's recollection is based in whole or in part on refreshment from or reliance at any time upon the transcripts of the interceptions. Where this is the case, his testimony must then also be suppressed. Bromley is in no different position to this extent than would be the Government representative who listened in while monitoring. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920); Wong Sun v. United States, 371 U.S. 471 (1963).

If there are other fruits of the Government's illegal conduct these must be suppressed but such matters can best be dealt with by evidentiary objections at the trial.

Finally, the Court wishes to make this comment. If, as the Court has concluded, the Fourth Amendment protects the privacy of a citizen against the Government's "uninvited ear," the Government may not use or rely on the transcripts

of the words which the Government illegally intercepted and its informer may not use or rely on the transcript of the words. The decision of the Supreme Court in Hoffa v. United States, 385 U.S. 293 (1966), appears to preserve the right of the informer to testify unaided by the transcripts of an illegal governmental monitoring but Hoffa preceded Katz and it now well may be that an informer like Bromley may not under any circumstances testify concerning conversations which the Government illegally monitored. That issue is reserved for consideration at the time the question of the nature and scope of Bromley's testimony is before the Court. The Court does not wish to determine this at this time since counsel have not had a full opportunity to brief and argue the point.

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Accordingly, the Court has concluded that the interceptions in issue in this motion must be suppressed both under the Fourth Amendment to the Constitution and under a discretionary exercise of the Court's supervisory power over the administration of justice. Testimony of Bromley will also be suppressed to the extent indicated.

Submit appropriate order on notice.

(Signed) GERHARD A. GESILL

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UNITED STATES DISTRICT JUDGE

September 30, 1968

III

ORDER OF COURT

SUSTAINING MOTION TO SUPPRESS

RECEIVED

OCT 27 1968

ORGANIZED CRIME AND  
RACKETEERING SECTION

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA )

v. )

CLIFFORD A. JONES )

Criminal No. 40-66

ORDER

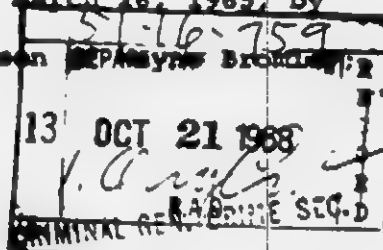
Defendant Clifford Jones has moved under Rule 41(e) of the Federal Rules of Criminal Procedure for an order that all evidence of various of his private conversations which were monitored by the Government, and all information obtained by leads therefrom, be suppressed as evidence against him in this criminal proceeding on the grounds that such evidence was obtained illegally in violation of his Constitutional rights. Said motion having come on for hearing before this Court; and the Court, after hearing testimony of various witnesses concerning the monitoring of conversations of Clifford Jones and after considering the briefs and arguments of counsel, having filed its Memorandum Opinion on September 30, 1968, on said motion,

IT IS HEREBY ORDERED that the following evidence is and shall be suppressed in this proceeding:

(1) All transcripts, recordings, tapes, and notes made by any Government representative of telephone conversations between Clifford Jones and Wayne Bromley monitored at the home of Wayne Bromley on the early morning of March 23, 1965, and at the office of Attorney Mark Sandground on March 24 and 25, 1965;

(2) All transcripts, recordings, tapes and notes made by any Government representative of conversations between Clifford Jones, Wayne Bromley and/or Robert G. Baker which were monitored in Los Angeles, California, on March 26, 1965, by means of a transmitter hidden on the person of Wayne Bromley;

CRIMINAL DIVISION



(3) Testimony of Wayne Bromley or others concerning the above conversations to the extent it is based in whole or in part on refreshment from or reliance at any time upon transcripts, recordings, tapes, and notes of said conversations made by any Government representative;

(4) Testimony concerning statements made by Clifford Jones in any of the above conversations by any Government agent or other persons who listened but were not parties to any such conversations.

(Signed) JOSEPH A. JEDRUSKI  
UNITED STATES DISTRICT JUDGE

October 15, 1968.



IV

TESTIMONY FROM HEARING

ON MOTION TO SUPPRESS

Whereupon --

DONALD PAGE MOORE

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

MR. LYNCH: Your Honor, may I examine from the lectern or do you want me to stand back?

THE COURT: I think the lectern works out better with the air conditioning, Mr. Lynch, but it is up to you. Any way you want to do it.

## DIRECT EXAMINATION

BY MR. LYNCH:

Q Would you state your name, sir.

A Donald Page, P-a-g-e, Moore, M-o-o-r-e.

Q And your occupation, Mr. Moore?

A I am a lawyer.

Q Where do you practice, sir?

A I am with a firm in Chicago, Illinois.

Q Mr. Moore, when did you graduate from law school?

A 1956.

Q And would you tell us what your employment was thereafter?

A From '56 to '58, I was staff counsel for the Illinois Division of the American Civil Liberties Union. Then I was in private practice for six years in Chicago. Then I came down to Washington as an attorney in the Criminal Division of the Department of Justice.

Q Would you tell us when you came down to Washington as an attorney in the Criminal Division?

A January 1964. I resigned from the Department in September of 1966 and went to practice with a large law firm in Chicago, and I am a partner in that firm and have been since that time.

Q Mr. Moore, when you came with the Criminal Division, did you have any particular assignment in January of '64?

A Well, I was with a little group called the Trial Staff for about four months, doing organized crime work up in Brooklyn and in the State of Michigan.

Then I had a long trial in Chicago in the summer of 1964. After that, I was Acting United States Attorney for the Southern District of West Virginia until the first of December, 1964; and then I came back to Washington as a Staff Assistant to Herbert J. Miller, Jr., who was then Assistant Attorney General in charge of the Criminal Division.

THE COURT: When was that?

THE WITNESS: I came to Washington December 1, 1964, and at that time I was assigned to be in charge of the Department of Justice investigation of Robert G. Baker.

BY MR. LYNCH:

Q Now, was a grand jury impaneled sometime around there?

A There had been some testimony. One witness, Wayne Bromley, had appeared before I think it was the September 1964 regular grand jury, maybe it was the October

grand jury, and testified in, I believe, October of 1964. Early in January of 1965, that same grand jury reconvened to hear evidence.

Q Relating to the Baker --

A Relating to the Baker case and allegations that had been made concerning Mr. Baker.

Q Now, at that time, Mr. Moore, did you know an attorney whose name is Mark Sandground?

A No, I did not, not in January of 1965.

Q Did it come about that you met eventually Mr. Sandground?

A Yes, in February.

Q February of 1965?

A That is correct.

Q Without going into the detail of the conversations, will you tell us in what connection you met Mr. Sandground and where you met him?

A I learned that Mr. Sandground was representing Mr. Wayne Bromley, and the first time I met Mr. Sandground I was with William O. Bittman, B-i-t-t-m-a-n, who was an attorney who had joined me as a sort of partner in charge of the Baker investigation about Christmastime of 1964.



THE COURT: Did Mr. Bittman report to you or did you report to him at this time?

THE WITNESS: We both reported to the Assistant Attorney General, Your Honor. We were partners. It was pretty much a fifty-fifty proposition.

BY MR. LYNCH:

Q Was Mr. Bittman a trial specialist?

A Yes, he was. We worked together in the Hoffa trial in Chicago the year before.

Q Now, will you tell us as best you can recollect when and what the circumstances were of your first meeting with Mr. Sandground?

A Bill Bittman and I met Mark Sandground in the office of Howard Willens, W-i-l-l-e-n-s, who at that time was First Assistant in the Criminal Division, and I believe that Mr. Sandground and Mr. Willens both mentioned to us that they had met before, they had gone to college together, or something like that, some years before.

We talked briefly in Mr. Willens office, and then I believe we went next door to the office of the Second Assistant in the Criminal Division. No one was filling that slot at the time, it was vacant, so the office was empty, and

it was a convenient place to have conversations with people outside of the Department.

Bittman and I talked to Mark Sandground in that office for some time. This was about the first week or perhaps early in the second week of February 1965.

Q Will you tell us generally the subject matter that you discussed, without going into the details?

A Yes. We discussed information that we had pertaining to Wayne Bromley, whom Mr. Sandground represented. We discussed the fact that an intensive investigation was being conducted with regard to Mr. Baker and with regard to close associates of his whom we had reason to believe had engaged in transactions, financial transactions with Mr. Baker.

Q Now, did there come a time when Mr. --

THE COURT: Now, Mr. Lynch, if you don't mind interruptions occasionally, so I can follow this.

At the time of this conference, was this conference with Sandground at your initiative or at his?

THE WITNESS: I think it was mostly at our initiative, Your Honor.

THE COURT: Which was it? Did he ask for the

appointment or did you ask to see him?

THE WITNESS: I believe we suggested to Mr. Sandground that it would be a good idea for him to come in and talk with us. He was quite willing.

A grand jury subpoena had been served on Mr. Browley prior to this conference and prior to the invitation.

Well, it is an opinion -- I think Mr. Sandground was as interested in talking to us as we were in talking to him at that time because of the fact that his client had been subpoenaed.

BY MR. LYNCH:

Q In point of fact, had he called initially to get an adjournment of the subpoena so he could talk to his client further?

A That is right, as a matter of fact. He wanted -- I remember that now. He wanted Browley's grand jury date postponed, and I think that is what precipitated the telephone call. And in the course of the telephone call -- I believe I was the one who initially spoke with Sandground but perhaps it was Bittman -- anyhow, he called to postpone the date of Browley's appearance, and we suggested that maybe a conference would be a good idea.

Q Was there more than one conference with Sandground prior --

Withdrawn.

Did you at some time have a conference with Sandground in company with Mr. Bromley?

A Yes, we did.

Q How many, if you recall, conferences did you have with Mr. Sandground prior to that conference?

A Maybe two, and I recall one telephone conversation that we had. I think we had the telephone conversation with Sandground before we met him, in which we talked about some of the information that we had concerning Mr. Bromley.

I recall that we told Sandground that Bromley had not filed his 1963 Federal income tax return, and I recall that Sandground said: Oh, yes, he did. We have got a copy of it, and your information is wrong. It turned out our information was wrong and that Sandground was right.

Q In any event, there did come a time when you had a conference together with Mr. Sandground and Mr. Bromley?

A That is right, one evening around dinnertime.

Q Can you pinpoint that date at all?

A Well, it was either a Thursday or a Friday night immediately preceding the 16th of February, 1965. The 16th

of February was a Tuesday, and this was the Thursday or Friday night preceding that Tuesday. I think it was either very late in the afternoon -- actually, I think it was probably about 6:00 p.m. that Bromley and Sandground came in.

Q Who else was there beside yourself, Mr. Sandground and Mr. Bromley?

A Bill Bittman.

Q Can you tell us approximately how long that conference lasted?

A Less than an hour, more than a half hour.

THE COURT: Whereabouts was it?

THE WITNESS: It was in the office, the vacant office of the Second Assistant.

THE COURT: At the Justice Department?

THE WITNESS: At the Department of Justice on the Constitution Avenue side of the building, second floor.

BY MR. LYNCH:

Q Thereafter did you have another conference with Mr. Bromley and Mr. Sandground?

A That is right, the next Tuesday morning.

Q Who else was there?

A Bittman, myself, Sandground and Bromley were present.



Q And how long did that conference take?

A I would say that one lasted three and a half to four and a half hours -- more like three and a half hours.

THE COURT: This was before he went before the grand jury?

THE WITNESS: Yes, sir.

BY MR. LYNCH:

Q Thereafter, did you have other conferences with Mr. Bromley in company and represented by Mr. Sandground?

A Yes. We had the first long meeting on Tuesday morning, February the 16th, 1965, and I believe it was Thursday night of the same week, which would have been the 18th, Bittman and I drove out to Sandground's home. I think we met Sandground downtown, because he was at his law office, and the three of us drove out to Sandground's home, which is over in Virginia.

Bromley met us out there. We had dinner together in Sandground's home and then we went down to a little den or library that Sandground has in his basement, and sat around and we must have talked for maybe four, maybe five hours, maybe five and a half hours.

Q And as a result of that series of conferences, did there come a time when you put Mr. Bromley before the

grand jury?

A Yes.

Q Do you remember what date that was?

A I think it was about February 23, 1965. It was late February 1965.

Q On that occasion, did Mr. Bromley testify extensively?

A He testified, not too long, actually. I think he just testified for maybe an hour or so. We just hit the high spots.

Q At that point did you consider him a cooperative witness?

A Yes.

Q Now, did there come sometime thereafter when --

THE COURT: What does that mean?

MR. LYNCH: Well --

THE COURT: What is a cooperative witness?

BY MR. LYNCH:

Q What is a cooperative witness, Mr. Moore?

A A witness who was telling the truth and not lying to us.

Q Did there come a time thereafter when a subpoena was issued for Mr. Cliff Jones of Las Vegas, Nevada?

A Yes.

Q Do you remember if there then came a time that Mr. Jones testified before the grand jury?

A I was not in Washington. I was out of the country on another phase of the investigation, but when I got back to the country on a Sunday, which must have been about the 19th or 20th of March, 1965, I was told that Jones had appeared and had testified before the grand jury the preceding week while I was out of the country.

MR. LYNCH: I think it is a matter of record in this case already that Mr. Jones testified before the grand jury on March 17, 1965.

BY MR. LYNCH:

Q Does that coincide with your recollection of the date you were told he appeared?

A That is the date that was on the grand jury transcript which I very promptly read as soon as I got back to Washington.

Q Now, referring you to the date March 22, 1965, did you receive a contact from Mr. Bittman on the evening of that day?

A That is right, on the night of March 22, which, if

that is the Tuesday -- I am sure that March 22 was a Tuesday -- anyhow, it was a Tuesday night, I was in my apartment getting ready to go to bed, therefore, it must have been nine or nine-thirty, perhaps even 10:00 p.m. -- I got a telephone call from Bill Bittman, who had at that time an apartment in the same building where I was living, over on Rhode Island here in the District and he -- well, I got a call from Bittman.

Shall I --

Q Continue. What was that call? What was discussed in that call?

A Bittman told me that he had just received a telephone call from Mark Sandground, that Sandground told him that he, Sandground, had just received a call from Wayne Bromley; and Bittman then related to me what Sandground said that Bromley said.

Very briefly, he said that Bromley said that he had received a telephone call from Clifford Jones, and at that time Bittman didn't go into the details, he just said that Sandground expressed great concern that Jones was trying to influence Bromley to tell a false story.

Q Now let me backtrack for a moment there. After

you became aware of Mr. Jones' appearance before the grand jury on March 17, did you become aware of any contact of Mr. Bromley by anyone for Mr. Jones?

A That is right. On Monday morning, which would have been the 21st, when I came into the office, I sat down with Bittman and he briefed me about what had been going on while I was out of the country.

One of the things he told me about was the fact that after Jones left the grand jury, Bromley was contacted first by telephone by a lady named D. Kaufman, and she was the secretary to Fred Black. That about a day after D. Kaufman, Bittman told me, called Bromley and arranged to meet him. They met, I think, in a cocktail lounge at the Carlton Hotel the following day. This would have been about the preceding Thursday or Friday. And at that time D. Kaufman told Bromley that Jones had spoken to her in Fred Black's suite at the Carlton, had told her that he, Jones, had been before the grand jury, that he, Jones, had been questioned about Wayne Bromley and his contacts with Wayne Bromley, that Jones told the grand jury that he had retained Wayne Bromley to do work for the First Western Financial Corporation in Washington, that Jones



had told the grand jury the truth, which was that the retainer was of Bromley to do work for First Western Financial, and that he wanted Bromley to know what he had said to the grand jury, and that he wanted D. Kaufman to tell this to Bromley because he, Jones, was afraid to contact Bromley directly --

Strike that.

Not that he was afraid to contact Bromley directly, but that he did not want to contact Bromley directly.

Now, this is what Bittman is telling me that he had learned from Bromley and Sandground prior to my return to the office on Monday morning, the 21st of March.

And I recall -- I made a note at the time -- Bittman said that Sandground was quite concerned because -- and then Bittman quoted something that Sandground had said to him and I wrote it down at the time. That D. Kaufman had relayed a message to this effect: Bromley was retained to do legal work for First Western Financial "and don't you forget it. That's the way it's going to be."

The reason I remember those specific words is because I wrote them down in a diary that I was keeping at that time. This is what Bittman said that Sandground had told him.

Q Now, did this coincide with the information that you had been furnished directly by Bromley as to his position vis-a-vis First Western Financial and Cliff Jones?

A No, this was completely inconsistent. Bromley had told us that checks were sent payable to him and that he had made an agreement with Baker and Jones that he was to be a conduit, that he was to cash the checks and then turn the cash over to Baker, because Jones wanted to send Baker \$10,000. That then additional moneys would be sent, checks payable to Bromley, so that there would be money with which Bromley could pay the taxes on the \$10,000 of legal fees that purportedly were going to him but actually were going to Baker.

Q Now prior to the contact on the evening of March the 22nd, were you a party to any conversation between Bittman and Sandground relating to the question of whether or not certain investigative technique should be employed?

A Yes, there were two such conversations prior to that time.

THE COURT: That is, before March --

MR. LYNCH: March 22.

THE COURT: -- 22.

THE WITNESS: That's right. The first conversation took place on that -- I believe it was Thursday evening, February the 18th, when Bittman and I met with Sandground and the three of us drove over to Virginia, to Sandground's home to meet with Bromley and interview him there.

I remember quite distinctly that while we were in the car approaching the bridge that goes over the Potomac, on our way to Virginia, Sandground said something to the effect that he was very concerned that Bromley's position would be misrepresented and he said something to the effect that he thought Mr. Baker was a very formidable person and so was Mr. Jones, and that he was fearful that Bromley would be thought to be a liar, and might it not be a good idea, therefore, if Bromley engaged in a conversation or two with Mr. Baker when the conversation would be recorded, with Bromley's consent but without Baker's knowledge.

Bittman and I both responded to this saying -- this is while we are driving -- that we didn't think that, you know, Mr. Sandground's fears warranted this sort of thing, so far as the Department of Justice was concerned, that Mr. Sandground was, as he well knew, perfectly at liberty to do any legal thing that he wanted to to protect

his client's rights, but that was up to Sandground and Bromley and we weren't going to have anything to do with it.

We would like to know about it if any such thing did transpire, but we thought that was up to Sandground and Bromley at that time.

THE COURT: Why didn't you want to have something to do with it?

THE WITNESS: Well, we just didn't -- frankly, we thought that Sandground's fears were a little unrealistic and this is quite a project to organize such a thing, there are risks involved from the point of view of the Government, and it didn't seem feasible or warranted to us at that time.

BY MR. LYNCH:

Q Now, you mentioned the second occasion when this possibility was discussed prior to March 22.

A That's right. That was -- well, it was on March 22 -- it was that Tuesday morning before I received the nighttime phone call from Bittman that I have described that took place that evening.

There was a discussion on the telephone between

Bittman and Sandground, as I recall it, that morning. In any event, I do not recall overhearing the conversation between Bittman and Sandground or Bittman's end of it that morning.

What I do recall is a discussion with Bill Bittman on Tuesday morning, the 22nd, in which Bill said: Well, Sandground feels that this D. Kaufman incident is further evidence that Jones is trying to get Bromley to lie and to establish a false version of the facts, and he just feels that maybe Bromley should call Jones and we should eavesdrop on that conversation, with Bromley's consent, and see if this is what is happening.

THE COURT: Well now, I want to get this straight. Was this in the morning of the 22nd, this conversation?

THE WITNESS: Yes, sir.

THE COURT: When did you first hear about the D. Kaufman matter?

THE WITNESS: Monday morning. This was the 21st, when I got back in the office. I returned to this country from Haiti, I think, on Sunday, came into the office Monday morning, Bill Bittman briefed me on what had happened the preceding week.



Then on Tuesday morning, Bill and I discussed this conversation that Bill had had with Sandground. I wasn't present at that conversation. All I know is my discussion with Bittman was that Sandground, in substance -- and I don't recall the exact words -- but in substance it went: Well, Sandground is talking about recording the conversation between Jones and Bromley now. And what do you think about that?

We talked about it, as to whether this was realistic, Sandground's fear that Jones was trying to influence Bromley to tell a false story to the grand jury.

We knew at that time or at least we thought we knew that Jones was aware that Bromley was under subpoena by the grand jury, and is this an obstruction of justice, what he is doing, or what he is getting ready to do, and what do we think about this.

We decided that we would call Sandground back and say: Look, we will take it under advisement. We will take it up with Jack Miller, the Assistant Attorney General, and we will consider it.

Between ourselves, I think what we said was, let's stall, let's not jump into anything. We will talk it over

with Miller and see what develops.

So we called him back and we stalled him.

Q Now that evening you mentioned you received a call from Bittman?

A That is right.

Q In which he related that Sandground had called him and advised him that Bromley had been called by Jones?

A That is right.

Q Now what happened then?

A Well, I asked Bill to come on down to my apartment while I got dressed, and he did a few minutes thereafter. At that time, Bill gave me more details about the call from Jones to Bromley that had apparently taken place earlier that evening, and said that he had discussed with Sandground tentatively the idea of Bromley calling Jones back, because he said what Jones had told Bromley, you know, was just wild, it was false.

I believe he told me that Sandground thought and that he thought that maybe Jones was recording his end of this conversation in an effort to establish a false version of the facts.

He told me that Bromley had neither agreed with nor

denied these statements that Jones was making over the telephone, that he had been pretty uncommunicative, just saying things like, "uh-huh," "O.K.," or something pretty neutral, and that Sandground was upset and Bromley was upset, and that he thought we ought to do something.

I immediately and wholeheartedly agreed, you know, that things had gone far enough at this point, and the people were making an effort, that Jones was making an effort to get Bromley to lie to that grand jury because Jones was in fear because he had lied to the grand jury.

This was our discussion that we had.

THE COURT: What was Bromley upset about? He testified. What was he upset about?

THE WITNESS: Well, he was upset for fear that Jones was trying to establish a false version of the facts.

THE COURT: Why would that upset Bromley?

THE WITNESS: I don't know. I imagine --

THE COURT: I don't understand why that would upset Bromley. Bromley had given his version and testified. Why would he be upset if somebody else had a different version?

THE WITNESS: Well, Your Honor, I can tell you why I thought he was upset, although I don't know. This is in the

realm of my opinion.

THE COURT: Mr. Moore, I know you are being very precise in your testimony, but I don't want your surmise. I am interested to know why Mr. Bromley was upset. What affair was it of his? He testified. You had his story. You had met with him.

THE WITNESS: Bromley was afraid of Clifford Jones and he made that clear to us.

THE COURT: What was he afraid of him about?

THE WITNESS: He thought that Clifford Jones was a very powerful man out in Las Vegas, and he was afraid of him.

THE COURT: Physically afraid?

THE WITNESS: Yes, sir. That is my opinion and I base that opinion, I think, on what Mr. Bromley said at the time.

THE COURT: In other words, Bromley thought that Mr. Jones would use physical violence against him?

THE WITNESS: Yes, we had some discussions about that.

BY MR. LYNCH:

Q With Bromley?

A Now, how deepseated his fears were, I don't know, but I know that we had some discussions about that, and I think we told him that we felt his fears of physical violence or retaliation were unrealistic.

THE COURT: I don't understand the retaliation. He had already testified, Mr. Moore.

BY MR. LYNCH:

Q Was it generally known that he had testified, Mr. Moore?

A No.

THE COURT: But he had already testified.

THE WITNESS: That is correct, before the grand jury.

BY MR. LYNCH:

Q Are you aware --

A Now, whether this was --

THE COURT: I would say to you, Mr. Lynch, I find this --

MR. LYNCH: I don't want to get into a colloquy while we are examining the witness, Your Honor.

THE COURT: No, I think that is right, but I think it is my function, when I find something that I can't understand in the testimony, to let you know.

MR. LYNCH: Very well.

THE COURT: I now let you know I simply don't understand this testimony.

MR. LYNCH: You will have to recall what you had here was a witness who was cooperating at this time.

THE COURT: Who had cooperated.

MR. LYNCH: Who had cooperated.

BY MR. LYNCH:

Q To your knowledge, had he advised Mr. Baker, had he advised Mr. Jones that he was cooperating?

A No, definitely, he had not.

MR. LYNCH: He was telling a story to the Government which his attorney and he feared that the Government may not believe, that is, his story that he was a conduit and that other people who are directly involved were contacting him and attempting to obtain his assent to a story that was not only not truthful but contrary to what he had already testified to the grand jury, Your Honor.

I think that that is a reasonable ground for someone being upset.

THE COURT: You may proceed. I have indicated my concern and lack of understanding of this aspect of the testimony.



MR. LYNCH: Very well.

MR. MORGAN: If Your Honor please, I would like to suggest that I have not objected to what is the extensive hearsay twice removed here.

THE COURT: This is in the nature of a hearing and the Court is impressed that Mr. Moore has been very careful in indicating what he knows, himself, and what he has heard from someone else. I think he is making that very clear as he goes along and the nature of this hearing is such that that objection will not be sustained.

You may proceed, Mr. Lynch.

BY MR. LYNCH:

Q Well, in any event, what then happened after you had this conversation with Mr. Bittman?

What did you do and where did you go?

A Well, we called a court reporter with the Alderson Reporting Service, and I think that is Miss Horning. Either her home telephone number was in the yellow pages of the phone book or else the answering service at Alderson's gave it to us. Anyhow, we reached her by telephone and asked her to stand by.

Then we called Howard Willens, the First Assistant,

and told Howard what we proposed to do and asked his permission.

I believe that Howard said he would get right back to us. Shortly thereafter Howard called us back. I am not sure whether there was one conversation or two conversations with Willens but my best recollection is that there were two. He said he would call us back and then he did. And he said: All right, if in your judgment you think this is the correct thing to do, we concur. Go ahead.

And we called the court reporter back and we said: Get ready. Get your Stenotype machine. We will be over to pick you up.

We also called Sandground and said: We think that Bromley should call Jones back and that we should monitor this with a court reporter. Do you agree?

And he said, yes, he agreed. And we arranged to meet with Sandground. We met with Sandground. We went over and picked up the court reporter who, as I recall it, lives someplace in Georgetown.

We drove to Bromley's home, arriving there about 11:45 p.m. on Tuesday March the 22nd, 1965. We went in. Bromley related to us his telephone conversation earlier that

evening with Jones.

We said: Well, will you call Jones back and let us monitor this?

Sandground said: I think you ought to.

Bromley said: I will.

Sandground, Bromley and Bittman went into one room, I believe it was Bromley's living room, to make the call. Miss Horning and I went into the kitchen where there was an extension telephone. I took the telephone off the hook and Miss Horning set up her machine and sat down at it, and I held the receiver to her ear.

Bromley dialed, reached Jones, had a conversation. I didn't hear the conversation because I was holding the extension phone receiver to Miss Horning's ear.

She manipulated her Stenotype machine for some length of time, then indicated, said to me: That is it. They have hung up.

We hung up the receiver. Bittman, Bromley and Sandground came into the room. We sat around the kitchen table.

The court reporter took out her Stenotype tape and read to all of us what she said was the conversation

which had just taken place between Jones and Bromley.

MR. LYNCH: May we have this marked Motion Exhibit 2.

MR. MORGAN: When you say, "this," Mr. Lynch, what do you mean?

MR. LYNCH: I am referring to -- well, I will just show it to you.

MR. MORGAN: I know what it is. I think the record should show what this is.

MR. LYNCH: Transcript headed up, "Telephone conversation between Wayne Bromley and Clifford Jones, at the home of Mr. Bromley. The conversation started at 12:15 a.m., Eastern Standard Time, Tuesday, March 23, 1965."

THE CLERK: Government's Exhibit No. 2 marked for identification on Motion to Suppress.

(Whereupon Transcript of Telephone Conversation between Bromley and Jones on March 23, 1965, was marked Government's Exhibit No. 2, for identification, on the Motion to Suppress.)

THE COURT: You don't have to formally qualify this with this witness. He didn't hear the conversation anyhow.

MR. LYNCH: All right.

THE COURT: I don't suppose there is any dispute that this is what was heard or is there a dispute?

MR. MORGAN: Let's just say I have no basis for disputing it, Your Honor.

BY MR. LYNCH:

Q Have you read this document that has been marked?

A Yes, many times.

Q Motion Exhibit 2.

Was that what the court reporter read back to you that morning?

A Yes.

MR. MORGAN: Well, in order that the record may be clear, I am sure this is not what she read back to Mr. Moore.

THE WITNESS: The words that appear on those pieces of paper are the words which she read back to us at Bromley's kitchen table during the wee morning hours of Wednesday, March 23, 1965.

That piece of paper was not in existence at that time.

BY MR. LYNCH:

Q Ultimately, you received this copy of this from the Alderson Court Reporting Service, is that correct?

A That is right. I believe it was the next day.

Q Now thereafter, would you tell us, did you hear --

Withdrawn.

Just to complete the record on the call of the 23rd, slightly after midnight on the 23rd, the evening of the 22nd and morning of the 23rd, about which you have just testified, was there something done to the telephone to avoid breathing in or picking up the sound of the breathing at the time that you held it to the court reporter's ear?

A Yes. Bromley showed us what to do because I didn't know. He said if you -- the part of the phone that you speak into, the speaker part of the phone, if you unscrew the outside of the part that you speak into, there is a little plate or diaphragm in there that is loose, and if you take that out, and then screw the outside of the speaker part back on, then the extension telephone won't pick up any noise through that speaker part. The mouthpiece is what I am trying to say.

Q Right.

A And so Bromley did it, as a matter of fact. He unscrewed the phone. He said: Here is what I am talking about. He pulled this little diaphragm out and screwed it back on and he said: Now he won't hear you.



THE COURT: The Court understands there was no indication given in any way, shape or form to Mr. Jones that this was being monitored at any time during the conversation?

THE WITNESS: That is correct.

MR. LYNCH: That is correct, Your Honor. The transcript indicates that, the transcript which is marked Motion Exhibit 2.

THE COURT: The transcript wouldn't entirely indicate it.

I am assuming and understand that there was no mechanical or any other indication by a beep noise or anything else that this conversation was being monitored. It was done entirely in a manner designed to conceal the fact that it was.

THE WITNESS: That is absolutely correct, Your Honor. That was the essence of it.

BY MR. LYNCH:

Q Incidentally, on that, this was in the kitchen on the kitchen telephone extension?

A That is where Miss Horning and I were.

Q I see. Was that a regular extension telephone, as

far as you could tell?

A That is right, it was just another telephone in the house that had the same phone number as the one in the living room.

THE COURT: Typical extension phone.

THE WITNESS: Yes, sir.

BY MR. LYNCH:

Q Now, thereafter, were you informed and if so when that Mr. Bromley had again been contacted by Mr. Jones?

MR. MORGAN: I am sorry, Mr. Lynch, I did not hear the question.

May I have it read back?

THE COURT: Was he informed that Mr. Bromley had again been contacted by Mr. Jones, was the question.

MR. MORGAN: The initial part.

THE COURT: Thereafter.

MR. LYNCH: Thereafter.

MR. MORGAN: Oh, all right.

THE WITNESS: Yes.

BY MR. LYNCH:

Q And do you recall when you learned and what you learned?

A Well, the court reporter conversation I have just described took place in the wee small hours on the morning of Tuesday March 23 -- wee small hours of -- I am getting confused.

Q Tuesday?

A It was the wee hours of Tuesday, which was whatever date it was.

THE COURT: The exhibits says, Tuesday, March 23.

THE WITNESS: Yes, Tuesday, March 23.

On the morning of Wednesday, March 24, which would have been some thirty-two, thirty-three hours later, when I got to the office, I had a conversation with Bill Bittman. Bittman told me that he had a conversation with Mark Sandground. I don't know whether it was a conversation in the middle of the night or a conversation which he had had earlier that morning, Wednesday morning; and Sandground told him that he had learned from Bromley-- and this is what Bittman told me -- that Clifford Jones had called Bromley late the preceding night, that would be about 11:30 p.m. on Tuesday, and had said at that time that -- this is my recollection of the substance of it, what Bittman was telling me that Sandground said that Bromley said now -- that Bromley should

go ahead and set up a meeting among Jones, Baker and Bromley for Thursday or Friday or Saturday of that week. And I believe that Bittman said the suggestion was that the meeting should take place in Los Angeles, but I am not at all sure.

The gist of it was that Jones had called Bromley late the night before and in substance said: Let's you and I and Baker get together within the next two or three or four days.

THE COURT: Mr. Moore, at this time, had the Department given Mr. Bromley a copy of the conversation that he purported to have had on March 23 at 12:15 a.m.?

THE WITNESS: I don't think so. It does seem to me --

THE COURT: Who paid for that transcript?

THE WITNESS: The Department of Justice paid for the transcript. I am sure that is so.

THE COURT: Was there any instruction that a copy be sent to Mr. Bromley?

THE WITNESS: I recall that Mark Sandground was extremely anxious to get hold of a copy of that.

THE COURT: Well, did he?

THE WITNESS: And what I don't -- and I am practically certain, almost one hundred per cent certain that he got it. What I don't recall is when he got it or, for that matter, when we got it.

THE COURT: Well, you said you had gotten it the next day.

THE WITNESS: I think we got it the next day.

THE COURT: You testified here that you had gotten it the next day.

THE WITNESS: I believe that we did because I know we were extremely anxious to get it and we got on the phone with Miss Horning and said: Hurry up, let's get that transcript. We really want it.

And my best recollection is that we got it Tuesday afternoon or Wednesday -- Tuesday afternoon.

THE COURT: You got it promptly.

THE WITNESS: But I am not a hundred per cent sure about that.

THE COURT: You got it promptly.

THE WITNESS: We got it very promptly.

THE COURT: And Sandground wanted a copy of it?

THE WITNESS: Very much.

THE COURT: The Justice Department bought it?

THE WITNESS: I didn't see the check but I am sure that is so.

THE COURT: They paid for all of it?

THE WITNESS: I am sure that is so.

THE COURT: Now, what is your best information as to when Mr. Sandground got a copy of it?

THE WITNESS: I am guessing, Judge. My guess is that he had a copy almost as soon as we did but I have no clear present recollection of that. I am inferring from --

THE COURT: I can understand you can't recall all of these details. Thank you.

BY MR. LYNCH:

Q In any event, just while we are on that subject, were Sandground and Bromley there at the time the court reporter read the substance of this transcript back?

A Yes. I believe we all sat around the kitchen table and I think -- I know I wanted coffee very badly, and I think we made so, so that I could have some coffee. I was tired.

Q Well, getting back now to, I believe it is, March 24, when you learned of this contact, what thereafter was done?



A Let's see. Wednesday morning --

THE COURT: You had just heard that Bromley told Sandground, who told Bittman, who told you, that Jones had said to Bromley, it was all right to go ahead and set up a meeting on Thursday, Friday or Saturday.

So we have about six or seven degrees of hearsay.

MR. LYNCH: Six removed hearsay.

THE WITNESS: That's right.

The other thing that we understood -- that I understood that Bittman said to me was the way it was left between Jones and Bromley was that Bromley was going to be the person to get in touch with Baker and that Baker was out in Los Angeles, and Bittman and I then, and Austin Mittler, M-i-t-t-l-e-r -- first name, Austin -- who was an attorney, one of the attorneys who was working for Bittman and I on the Baker case -- we sat down and we prepared a little short memorandum of about two pages for the signature of Jack Miller, the Assistant Attorney General, addressed to Director Hoover of the FBI, requesting that the FBI make available equipment and a technician so that we could tape record the telephone calls from Bromley to Baker and Jones, at which these arrangements to meet would be made specific

as to time and place, and Baker would be told what was happening and Jones would be notified. And --

THE COURT: Well now, while we are on that, during these events that you have described up to now, was it the practice for Mr. Bittman or for you to make memoranda of these contacts with Sandground?

THE WITNESS: The answer, Your Honor, is, yes, and, no. Sometimes we made memoranda and sometimes we didn't. Sometimes I made handwritten notes in a diary I kept. Very often these contacts would be related as part of a memorandum which we would send to the Assistant Attorney General, asking permission to do this or that.

A couple of times in narrative form I put the story in a long memorandum on two occasions to the Assistant Attorney General, which summarized everything that had been going on and made recommendations.

THE COURT: For example, after you had a four- or five-hour conversation out there in Mr. Sandground's rumpus room in Virginia, or whatever it was, did you come back and make a detailed memorandum of what Mr. Bromley then told you?

THE WITNESS: No, sir, we did not.

THE COURT: Did you make notes at the time?

THE WITNESS: I don't remember whether we did or not. If we did at all, it was doodling.

The answer is, no, we did not make notes reflecting the substance of the conversation. We decided that the best and most accurate way to get Wayne Bromley's story down on paper would be to put him before the grand jury where we would have a verbatim stenographic transcript of what his story was.

We were just interested in getting the substance of the information so we would know what to ask him about and so that we could initiate other investigation, either to corroborate or refute what he was telling us.

We promptly did put him before the grand jury, within a matter of a week, I think, a week after his first disclosure to us. Along about the 23rd of February we put him before the grand jury and got the substance of the story which he told us on the record.

To answer your question a little more fully, Your Honor, I believe I do recall a memorandum or two or three which reflected the substance of the information which Bromley had given us.

I think there was an early memorandum in late February or March, and I know there was a long memorandum, about eighty-three pages, in April that I wrote; and later on there was a much longer memorandum than that, about 183 pages, that I wrote with Bittman's assistance, in which we, among other things, told the Bromley story, the story of our initial contacts with him, and the telephone conversations, the Los Angeles meeting, and the whole thing in narrative form.

So there is a lot of paper around over in the Department. I would -- well, I know there is.

MR. LYNCH: May we have this marked Motion Exhibit 3.

THE CLERK: Government's Exhibit No. 3.

THE COURT: What is the date of that?

MR. LYNCH: March 24, Your Honor.

THE CLERK: Government's Exhibit No. 3 marked for identification on the Motion to Suppress.

(Whereupon copy of Memorandum dated March 24, 1965, written by Austin Mittler, was marked Government's Exhibit No. 3 on Motion to Suppress.)

MR. LYNCH: Do you want to see this, Your Honor?

THE COURT: Show it to the witness. It is all right.

BY MR. LYNCH:

Q Will you tell us what that is, Motion Exhibit 3, Mr. Moore?

A Yes. This is a memorandum, or a carbon copy of a memorandum which was drafted by Austin Mittler at the request of Bill Bittman and I, initialed by Mittler, and hand carried up to the office of Herbert J. Miller, Jr., who was Assistant Attorney General.

It is a memorandum which in form is from Mr. Miller to the Director of the Federal Bureau of Investigation, and it requests that the FBI take the necessary steps in cooperation with Bromley to monitor and record the telephone calls from Bromley to Jones and Baker to set up the meeting, a meeting between or among Baker, Jones and Bromley, so that we could determine what took place at that meeting, and determine whether an effort was being made to coerce or intimidate Bromley, or to induce him to tell a false story.

THE COURT: That is where I totally leave you, Mr. Moore. He had testified.

THE WITNESS: Yes, sir.

THE COURT: He had given his version of the events.

THE WITNESS: Yes, sir.

THE COURT: And according to his lawyer, who was relaying what he was saying, he was being approached by Mr. Jones.

THE WITNESS: That's right.

THE COURT: He had no obligation to set up a meeting anywhere.

THE WITNESS: That's correct.

THE COURT: He had no obligation to do anything, did he?

THE WITNESS: That's correct. We made it clear to him at all times he didn't have any obligation.

THE COURT: Well, what was he doing it for?

THE WITNESS: I can just tell you what Sandground told me. And this isn't surmise on the level of the surmise that I reluctantly expressed before.

Sandground, in substance now — and here I am condensing a number of conversations.

THE COURT: Surely.

THE WITNESS: — indicated that he and Bromley were



afraid that we thought Bromley was lying and that Bromley had kept this money from First Western Financial Corporation and from the other sources that Bromley had then told us about, U. S. Freight Company, and some of these other places, and that Bromley was lying to us.

THE COURT: Had you ever told Bromley that you thought he was lying?

THE WITNESS: No, we hadn't, but we had -- I will say this: We made it very clear to Bromley and Sandground that if anybody did lie to us or lied to that grand jury, that we were going to take it very seriously.

THE COURT: Oh, surely, you always would.

THE WITNESS: And the other thing is, we were very much in a position of encouraging this kind of cooperation for two reasons: One, we wanted to get, you know, whatever evidence was there to be had; and two, we wanted to be absolutely certain in our own minds that Bromley was telling the truth and not making a bunch of false accusations. That was as important to us as making a case, making a right case and not falsely accusing somebody.

With any witness like Bromley, you are not just going to take his word for anything. You are going to do

everything that you can to corroborate him both to make a good witness out of him and also to absolutely assure yourself that he is truthful and not false.

THE COURT: Isn't that just what you were up to?

THE WITNESS: Oh, certainly.

THE COURT: I don't criticize it at all, but you were up to trying to make a good witness out of him.

THE WITNESS: We sure were. We weren't dragged into this reluctantly. We had reservations at first and when Sandground mentioned it in February, we didn't think it was feasible and weren't sure that it was indicated. When he brought it up the second time on that Tuesday morning, after the D. Kaufman contact, we decided to stall and examine this from every area.

THE COURT: Surely.

THE WITNESS: One of the questions we had in our minds, and we discussed it, is this a trap? Are we being maneuvered into a situation where somebody will spring something to embarrass the Department of Justice? And we wanted to take our time.

Then that Tuesday night, when we heard that Jones had approached that --

Strike that.

When we heard that Jones had made a telephone call direct to Bromley, we thought two things: One -- I am just talking about my own mental processes.

THE COURT: Surely.

THE WITNESS: I can't talk about anybody else. I don't think I expressed this to anybody else, although I suspect I expressed this to Bittman at one time or another.

I thought to myself two things: One, is Jones going to panic Bromley and spin him? Is Bromley going to get scared because he is getting all these calls from Jones and turn around and say: Well, everything I told you was a lie and it is not so. I didn't know.

To this day I don't know what the exact terms of the conversation between Jones and Bromley were, but I had my opinions of Mr. Jones and of Mr. Bromley and of the seriousness of the case and I was concerned.

Two, maybe what is happening here is the initiation of a Federal crime.

THE COURT: Surely.

THE WITNESS: If Bromley is being intimidated or coerced or somebody, specifically, Mr. Jones is trying to get Bromley to lie to the grand jury, then we sure want to know

about that.

THE COURT: It wasn't getting Mr. Bromley to lie to the grand jury. He had already testified.

THE WITNESS: But Jones didn't know he had testified. Bromley told Jones that, I have not.

THE COURT: I am talking about your attitude of mind, sir. He had already testified.

THE WITNESS: Oh, that is right.

THE COURT: Let me understand this: What inducement if any did you give Mr. Bromley, who was in fear, according to your testimony, of physical violence from Mr. Jones to arrange an appointment with him at a hotel in Los Angeles?

THE WITNESS: I don't know that we made any -- I don't think "inducement" is a proper word.

THE COURT: Well, this man was in physical fear of Mr. Jones. What made him go out there?

THE WITNESS: Well, two things: One, I said this is my surmise and that I inferred this from conversations that I had. Two, I think -- and again, you see, I am in an area of surmise now which I am reluctant to express, but I will be happy to do so if Your Honor wants me to.

THE COURT: You gave him, yourself, no inducement, is

what you testified to. In other words, Mr. Bromley went there of his own volition.

THE WITNESS: He went there of his own --

THE COURT: Without any inducement, promise, financial or any other award from you on behalf of the Department of Justice; is that right?

Is that what you are saying?

THE WITNESS: I think that is right, but also --

THE COURT: Now that you ought to be able to tell me without surmise. Is it so or not?

THE WITNESS: Oh, well, you break this down: Did we promise him money for doing it? Absolutely not.

Did we indicate to him that if he wound up out of pocket for actual expenses out there that we would reimburse him for that, I have no clear present recollection that we did, but I would be very surprised if we did not, and I think we must have.

During the conversation with Jones, one of these phone conversations, Bromley had said to Jones: Well, look, are you going to pay my expenses out there?

And Jones had said: Yes, I will. That, in substance. That was one of the recorded conversations, so the

exact words ought to be available to the Court.

Now if Bromley brought up to us: Would you make up the difference if Jones doesn't pay all my expenses. If he said that to us, I have no doubt that we would have said, of course, we will.

Did we communicate --

THE COURT: What about his lawyer's expenses?

THE WITNESS: The same thing, the same thing. I know that was the subject of discussion between Sandground and us and we made it clear.

THE COURT: What arrangement did you make to pay Sandground money?

THE WITNESS: I drew money from the Department of Justice and gave it to him, after getting from him an account of what his expenses were, his plane fare, hotel bill, and so forth.

As I recall it, initially we thought that Bromley should go out there alone, that Sandground should not go out there, but Sandground insisted. He said: Oh, no, this is my client, and this is an important matter and I am going to go out there, and I insist on it. And I think you should pay my expenses.



Whereupon we said: All right. We said it, among other reasons, because we didn't want Sandground to get sore at us.

THE COURT: Surely.

I think this would be a good point to take a recess. We have to change reporters. It is our mid-morning recess time and I have to spell the reporters a little. You talk very rapidly and we have been very busy here.

We will take a ten-minute recess at this time.

(Whereupon a short recess was taken.)

Harper  
fls.

THE CLERK: The case of Clifford A. Jones.

THE COURT: Before you proceed, Mr. Lynch, I have one other question I want to be sure I understand. At this time Mr. Jones was under investigation by the Department for what?

THE WITNESS: I would say nobody has written a paper saying that Mr. Jones was or was not under investigation for anything. So, what you are really asking me, at least as I interpret your question, your Honor --

THE COURT: Was he under investigation?

THE WITNESS: In my opinion and I am sure in the opinion of Bill Bittman. We said to ourselves, "We are going to among other things, assure ourselves one way or another as to whether Clifford Jones committed perjury before that Grand Jury.

THE COURT: Apart from that, I understand that whatever would be involved out of that, tampering or impeding the processes of Justice, had he been under investigation for tax violation. I mean, was he one of the close associates of Bobby Baker that you mentioned at the beginning of your testimony that you were investigating, or had you at that time determined you didn't have or couldn't have or wouldn't have the tax case against him?

THE WITNESS: There were other incidents which we knew about before Bromley told us his story that we were concerned about and wanted to know all about -- transactions involving stock -- something called Waikiki Savings and Loan Association.

THE COURT: So, he was one of the friends or associates of Baker who was under investigation along with Baker, is that correct?

THE WITNESS: I would say he was not under investigation. I emphasize you don't file a document, you know, saying this is an investigation of "X". My mental process is Bittman's essentially.

THE COURT: Yes.

THE WITNESS: He was not under investigation. He was not a subject of investigation, aimed at him, Clifford Jones until we heard his testimony before the Grand Jury.

Prior to that time he was of interest to us because he had been in transactions with Baker and we wanted to know about those transactions because we were interested in Baker's involvement.

THE COURT: But, he was not a subject of any inquiry and became so only in respect of possible perjury before the Grand Jury.

THE WITNESS: That is right.

THE COURT: That is what I wanted to get clear.

THE WITNESS: And, also, at the same time we were very interested although we formed no clear or defined ideas as to why that money was going through his corporation through Bromley to Baker. What did Baker do in exchange for these unusual payments.

THE COURT: Sure.

THE WITNESS: We were interersted in Mr. Jones, but he wasn't a target at least in my mind, at the time or my mind now until after he testified.

THE COURT: That is what I wanted to get clear on.

THE WITNESS: I wonder, your Honor, there were two things that came up before that I don't know that I expressed myself clearly about. I was reluctant, too, because it involves more question of my mental processes than it does tracional type testimony that one gives to a jury.

Perhaps I ought to clear up a couple matters. One, your Honor asked me about inducement to Bromley to go out to Los Angeles. I answered your question and I gave you what was a correct answer. This is my recollection and this is my knowledge, but, I don't want to give the

impression that either myself or Mr. Bittman in the Department of Justice was dragged into this monitoring operation, kicking and screaming and opposing it all the time.

THE COURT: You haven't given the Court that impression.

THE WITNESS: All right. Secondly, this matter of Bromley's fear or apprehension with regard to Mr. Jones. The point is that Mr. Bromley's apprehension was with regard to what would happen if and when Mr. Jones found out that he Bromley was talking to the Department of Justice.

He wasn't afraid of Jones that minute, if he was afraid at all. Again, I am talking about my mental processes. And, my impression was that Mr. Bromley's concern was what will happen when Jones finds out that I have already been before the Grand Jury and talked to the Department of Justice and told them about this transaction.

THE COURT: And, he was not concerned that if on top of that Mr. Jones found out he was collaborating with you in an effort to monitor Mr. Jones' conversation that he would be in more difficulty.

THE WITNESS: I think he was probably very concerned about that, but he was just taking it a step at a

time, and right then what he wanted to do was go along with Jones so Jones wouldn't be angry at him and with Baker so Baker wouldn't be angry at him, and, at the same time, he had made his decision to tell us what happened. so, he was in effect trying to do two inconsistent things at the same time.

THE COURT: Very well. I understand.

THE WITNESS: And, he was nervous about it.

BY MR. LYNCH:

Q We were up to the point where you had sent that memorandum dated March 24th from the Assistant Attorney Jeneral to the Director of the Federal Bureau of Investigation. What was done thereafter in connnection with the request that caused the monitoring?

A The FBI agreed to make an agent from the Washington field office and some electronic equipment available. The agent's name was Larry Condontore, C-o-n-d-o-n-t-o-r-e or something like that.

We made an appointment to meet at Mark Sanground's office, with Sanground, Bromley, Bittman, myself and Condontore. We all went over there. The first time we went over there was as I recall it, late in the afternoon, Wednesday, the 24th of March, 1965.



At that time we again asked Bromley and Sanground did they want to -- did they agree to our monitoring these phone calls from Bromley to Baker and Jones, and they said they did.

As on prior occasions, the court reporter telephoned a call, I believe, that Bromley signed a written consent which was witnessed by his lawyer, Mark Sanground. Then Agent Condonore took some equipment. I think he had a suction cup or some sort of attachment to the telephone or receiver on Mark Sandground's desk and he attached that and hooked it up to a tape recorder.

Bromley dialed and placed these calls. First he tried to reach Baker at the Beverly Rodeo Hotel in Beverley Hills, California, and he tried to reach Baker at Serv-U, S-e-r-v- U Corporation.

THE COURT: We have all of those.

THE WITNESS: Excuse me, your Honor.

BY MR. LYNCH:

Q Several calls were monitored on the 24th?

A Yes, trying to reach these people, and he struck out. He didn't reach anybody on the 24th as I recall. The next morning, which was Thursday morning, the 25th, we again, the same cast of characters met at Sanground's

office, and this time Bromley did reach Baker and had a conversation with him which was recorded and then called Clifford Jones and had a conversation with him which was recorded.

THE COURT: All of these calls were from lawyer Sanground's office?

THE WITNESS: Yes, sir. And, in the presence of the people I mentioned.

THE COURT: You and Bittman and Wayne Bromley, and Sanground and the FBI agent.

THE WITNESS: Agent Condontore. In substance after those calls on Thursday morning, were completed, we had a conversation with Bromley in which Bromley said, "I am going out to Los Angeles. I have agreed to go out to Los Angeles tomorrow afternoon to meet with Baker and Jones either at the Beverley Rodeo or the Beverley Wilshire. I don't know.. Baker's was the Radeo and Jones was going to be at the Wilshire.

BY MR. LYNCH:

Q During those calls on the 24th and 25th, again Mr. Jones was not advised Bromley's phone was arranged so that the calls could be recorded?

A No. The essence of it was that he wouldn't know.

Q Now, when you learned that Mr. Bromley had set up an arrangement to meet with Mr. Jones and Mr. Baker out in Los Angeles, did you then take steps to go out there yourself and with other people?

A Yes.

Q Now, when did you decide to go out there yourself? Do you recall?

A Either Thursday night or the first thing Friday morning. I think we decided tentatively Thursday night and definitely Friday morning.

Q Friday morning being Friday, March 26th, 1965?

A That is right.

Q What arrangements were made as far as Mr. Sanground going out? Would you explain those?

A Well, first it was our idea that Bromley should go out by himself. We thought it would -- that there was no point in Sandground going, and Sandground said, "No, he is my client, and I don't think he should go out there by himself. I want to be nearby and I think I should go," and when he took that position, we agreed to reimburse him for his expenses and did so.

Q Out of pocket expenses on the trip out there and back?

A That is correct, plane fare, hotel bills, meals,

and whatever it cost him.

Q Would you tell us what in so far as your own activities and what you did on the 26th? Did you get a plane and if so?

A First we met at Sanground's office. This time there was an agent -- expert electronics man, I guess you would call him, from the Bureau of Narcotics, John Thompson. He was there, I was there, and Bittman was there and Bromley and Sanground in Sanground's office. This was along about noon or 1:00 o'clock on Friday, March 26th, 1965. At that time Agent Thompson had with him some equipment known as kel set, which was new equipment he told us. He just got it. And, Agent Thompson took some adhesive tape and he taped to Bromley's hip or Bromley's belly a small receiver transmitter with a microphone on it.

This was about the size of a pack of cigarettes. He taped it on Bromley's belly with adhesive tape -- a little wire about eight or nine inches long, with a little something on the end of it that the agent said was a microphone. This lead up from the receiver transmitter and was pinned to the inside of Bromley's shirt somehow. When Bromley got all his clothes back on, you couldn't see

he was wired, to use the colloquial term, but he was. I saw that and once those arrangements were made, in the meantime we obtained airline tickets for everybody. I got in the car with Thompson. We were driven out to Friendship Airport near Baltimore where we met with another Department of Justice Attorney who was assisting the Baker investigation, at that time. he was B. Franklin Taylor. I think he was the assistant chief of the General Crime Section, but he was helping us in the Baker case at that time.

We met him by prearrangement at Friendship Airport, got on the airplane along about 3:00 p.m. on Friday March 26th and flew to Los Angeles.

We already arranged that Sanground and Bromley would follow us by about an hour and forty-five minutes or two hours and take the next plane out to Los Angeles. Taylor and Thompson and I flew to Los Angeles, got off the plane and was met by an agent there in Los Angeles who had made reservations for the people involved, myself, Taylor and the others, I suppose you call them teams or squads that were going to be used in the three hotels.

We had two rooms at the Beverly Rodeo, two rooms at the Beverley Wilshire, and one room at the Beverly Hilton.

Agents Thompson, Taylor and I got ~~in~~ a car at the airport and drove to the Beverley Hilton, where by prearrangement we met two Assistant United States Attorneys for the Southern District of California, Bob Timlin and Bob Talcott. With them was a man, Real, who was then a United States Attorney for the Southern District of California.

The agents stayed in the lobby. Taylor, myself, and Real and two assistants went up to room 420 in the Hilton and sat down. I briefed the California people on what was happening and what we planned. Then the agents came up from the lobby. And, we told them where they were going to go and what they were going to do. We didn't mention the names of anyone that was involved.

Q In other words, the agents were not informed as to the nature of the investigation or who was involved.

A That is right. That is why I met separately with the California people before the agents came up to the room.

THE COURT: You say they weren't informed. They weren't informed by you.

THE WITNESS: That is right.

THE COURT: Mr. Hoover received a memoranda, and that described fully what you were up to.

THE WITNESS: That is right. These were not



FBI agents. They were agents of the Bureau of Narcotics and Treasury Department.

THE COURT: I see.

THE WITNESS: And, their superior, deputy commissioner Gaffney, he knew, but the agents didn't. We were still concerned, perhaps unnecessarily about security.

Then we all departed and everybody went where I told them to. Taylor and one Narcotic's agent to Beverly Wilshire, Timlin and another Narcotics Agent to the Beverley Wilshire, myself and John Thompson to the Beverley Rodeo and Bob Talcott and a Narcotics agent to the Beverley Rodeo.

We all four teams went to these hotels and Talcott and I checked into the Rodeo and Thompson was with me and another agent and Talcott and I went to my room with Agent Thompson and shortly thereafter we were joined by Steve Miller, who was another assistant U. S. Attorney from the Southern District of California.

Thompson sat up his equipment which was contained with the kel set itself which is an attache case. You open it up and there is a tape recorder and a radio receiver and an amplifier, a set of earphones

and many switches and buttons. He plugged it in and turned it on.

BY MR. LYNCH:

Q Approximately what time was this on the 26th of March? Would you tell us?

A I think we got there after 7:30 and before 8:30 p.m.

THE COURT: In all there were fourteen people involved in the U. S. government.

THE WITNESS: Three -- five -- four -- nine men in the hotel rooms, three in mine and two in each of the other three -- three including myself plus United States Attorney Real made some telephone calls for us but didn't personally participate.

THE COURT: And three of his assistants.

THE WITNESS: That is right, but they are included in the nine.

THE COURT: Nine or ten people.

THE WITNESS: Nine or ten people.

THE COURT: Okay.

BY MR. LYNCH:

Q And, once you got your equipment set up or Mr. Thompson got your equipment set up, tell us what

happened.

A Well, shortly thereafter we heard Bromley on the set. He said something to the effect, "Well, I am in my room."

Q What was -- mechanically you were next to his room.

A To this day I don't know where his room was.

THE COURT: You were wired into his room?

THE WITNESS: No. No. There is a radio transmitter taped to his body and we have a radio receiver in our room.

THE COURT: You were hearing from the cigarette like package that had been taped to his body before he left?

THE WITNESS: That is right. That was broadcasting and we were receiving on this kel set which was in an attache case. Bromley said something, I don't recall exactly, but "Here I am and I am going to turn this thing off and listen to the radio a while, because I haven't reached Baker yet," or something like that, or whatever it is, it has been written down. We have got it -- the exact words.

BY MR. LYNCH:

Q Excuse me. Just at this point, he was in the

Rodeo at this point?

A Yes. I don't know that except from what I was hearing on the kel set. I never saw him in the Rodeo.

Q And, you were in the Rodeo?

A Yes.

Q Do you know how far the Beverley Wilshire is from the Beverley Rodeo?

A Not exactly. I know what people told me, which is a block and a half or so, give or take a half block.

Q Would you continue then. What else happened?

A Well, we got no reception for a while and then we heard Bromley talking. We heard a woman's voice, just chit-chat. I don't even recall what was said. And, then we didn't hear anything for a while and then we heard very faintly sounds of a conversation.

And, Thompson fiddled with the equipment and made some adjustments with the wires and things and then we heard it better.

And, there was a conversation going on and we heard a woman's voice, laughter and conversation. The way that kel set works, as soon as it starts to receive conversation, the turn table starts going automatically; if

you push the buttons in the right sequence, it sets so it records when you are receiving something. The turntable goes around. Thompson had the turntable going and recording.

We heard a conversation -- three different voices, one of which I could recognize as Bromley's, one of which had what I thought was a rather pronounced draw and the third voice.

I don't think we heard all of the conversation, because sometimes it would fade out and come back in.

Q That is as a weak signal on a radio receiver would fade out and come in?

A That is right.

THE COURT: That is indicated on the transcript, isn't it?

MR. LYNCH: Yes.

THE COURT: Where it says unintelligible, you can't hear or fades out, as much as you could get was put down?

THE WITNESS: That is right. The reception was bad or there was static, but you could make out what was being said, most of the times. The three-way conversation I referred to between Bromley, the draw and the third person began around a few minutes before 10:00 p.m. as I recall.

Well, let me straighten that out. I don't have a present recollection of when the conversation started or when it ended. I recall that it was at night and it lasted about an hour.

I have looked at memoranda and things yesterday over at the Department of Justice and when I say it started five minutes of 10:00 and wound up at 11:02, I am saying what the memoranda say and not what I actually presently recall.

THE COURT: Do you know where Mr. Sanground was during all of this?

THE WITNESS: Yes, he was checked into a room at the Beverley Hilton which was separate from the room that I had.

THE COURT: Was he present to hear the reception from the tape?

THE WITNESS: No, he was not.

MR. LYNCH: He was not provided with a receiver?

THE WITNESS: That's right.

THE COURT: What was he doing?

THE WITNESS: Sitting there waiting.

BY MR. LYNCH:

Q Would you continue? What happened thereafter?

THE WITNESS: Well, the conversation ended after about an hour. What we heard is that.

THE COURT: I have that, I think. Unless you are going to suggest you heard something other than what was recorded, I think the way to deal with that would be to identify the conversation.

MR. MORGAN: If your Honor please, at this point I think it would be desirable to clarify which of these recordings Mr. Moore is talking about. There are two.

THE COURT: I have assumed he is talking about the one conversation overheard by B. Franklin Taylor on the kel receiver in room 422.

THE WITNESS: That is correct.

THE COURT: That is what he has been testifying about.

THE WITNESS: And, precisely what I have heard is what we have on the tape, which was the tape that turned out. The only one that turned out was the one on Thompson's set over in the Rodeo.

The sets that were in the Wilshire were receptions much much better, and didn't record properly because the agents were supposed to press two buttons, one to make the turntable go and the other one to make it record,



and they only pressed the first one.

MR. LYNCH: Mr. Taylor was over in the Wilshire,  
is that correct?

THE WITNESS: Yes.

THE COURT: He was with you.

THE WITNESS: No, Taylor was in the Wilshire with  
an Agent Thompson.

THE COURT: I was wrong.

MR. MORGAN: If your Honor please, I have been  
supplied with what purports to be two separate recordings.

THE COURT: Let's have him identify it.

MR. MORGAN: Which is Mr. Moore talking about.  
That is all I would like to know.

THE COURT: You are quite right, Mr. Morgan.

MR. LYNCH: May we have this marked Motion Exhibit  
4.

THE CLERK: Government's Exhibit Number 4,  
motion to suppress, marked for identification.

(Government's Exhibit Number 4  
marked for identification.)

MR. LYNCH: And Motion Exhibit 5.

THE COURT: Now, let me get mine marked

correspondingly and let Mr. Morgan get his marked correspondingly.

THE CLERK: Government's Exhibit 4 is conversation overheard by B. Franklin Taylor on March 26, 1965.

THE COURT: Number five is the one with the Roman 2 up in the left hand corner?

MR. LYNCH: Correct, your Honor.

THE COURT: Are you straightened out, Mr. Morgan? Number 5 is the one with the Roman 2 in the upper left hand corner, and number 4 is the one with "Taped conversation overhead by B. Franklin Taylor," etc.

MR. MORGAN: Maybe I am missing something here, Your Honor. I don't seem to find the B. Franklin Taylor thing.

MR. LYNCH: That was excised from your copy.

MR. MORGAN: It was excised from my copy.

THE COURT: It starts, "Wherever possible I have attempted to identify."

MR. MORGAN: Why was it excised from my copy?

MR. LYNCH: There wasn't any conversation.

THE COURT: In any event, does he have the rest of it?

MR. LYNCH: Yes, he has the entire --

THE COURT: Would you like to have my copy, Mr. Morgan?

MR. MORGAN: I can see what is up here now, but it is not the copy I have been supplied by the Department. That purports to be your Motion Exhibit 4, is that correct?

MR. LYNCH: That is Motion Exhibit 4.

MR. MORGAN: In order that I may be clear, which of these is Mr. Moore talking about?

THE COURT: He is going to show them to the witness now. I wanted to be sure you had yours marked, so you understood what he is talking about.

THE CLERK: Government's Exhibit Number 5 marked for identification.

(Government's Exhibit Number 5  
was marked for identification.)

BY MR. LYNCH:

Q Showing you Government's Exhibits Number 4 and 5, Mr. Moore, can you tell us what they are?

A Number 5 appears to be a carbon copy -- a memorandum subsequently prepared by Bob Timlin, one of the assistants out there in Los Angeles -- Assistant U. S. Attorney.

Q Where was Timlin located?

A He was in the Beverley Wilshire. Government Exhibit 4 is a memorandum which was subsequently prepared by B. Franklin Taylor, on the basis of his notes and the tape recording. He listened to the tape recording that came from Thompson's set and also checked that against his notes to refresh his recollection.

THE COURT: Neither of these then are what you heard where you were?

THE WITNESS: Not verbatim, because my best recollection is that Taylor heard some of the things that were said when the Thompson set -- my set faded out on occasion.

THE COURT: So, he took what there was on your set plus what there was on his set and put the two of them together in to the Exhibit that is Number 4, is that correct?

THE WITNESS: My understanding is that he heard on his set everything that we heard on our set, but we heard less than he did, because on a few occasions there was a fadeout.

THE COURT: But, he checked to be sure of that by checking on your set, which was the Thompson set?

THE WITNESS: He listened to Thompson's tape recording.

THE COURT: I understand what you are saying.

Did you have an objection?

MR. MORGAN: Well, Mr. Examiner, I think it becomes immediately apparent that what has been marked for identification as Government's Motion Exhibit 4 and 5 are not recordings made by anyone in Mr. Moore's presence at the time the conversation was recorded. Is not that correct?

MR. LYNCH: No one said they were.

MR. MORGAN: Right.

THE COURT: I take it what we are confronted with Mr. Moore is describing in general what happened, and what the arrangements were and that other witnesses will be forthcoming to fill in the necessary gaps.

MR. MORGAN: If they are going to be forthcoming.

THE COURT: I suspect that they would be.

BY MR. LYNCH:

Q Will you continue, Mr. Moore?

A Along about midnight, -- the Friday night which was the 26th of March, I went in a cab from the Beverley Rodeo to the Beverley Hilton. I was going to go to the room of Mark Sandground at the Beverley Hilton, but as I came in the lobby, by accident, I was astonished almost to run into Wayne Bromley who was there.

Bromley told me that he and Baker and some friends of theirs were downstairs on a level below the lobby floor in the Beverley Hilton in a nightclub or supper club there called the Monseiur, M-o-n-s-e-i-u-r, I guess, at the Beverley Hilton, and he had come up to go to the men's room or something.

So, I said, "Well, let's not stand around here talking. Let's go upstairs to my room on the 4th floor," which we did. We talked briefly there. We called Mark Sanground on the telephone in his room and we either -- Bromley and I went to Sanground's room or Sanground came to my room. I forget which and the three of us had a conversation about what had happened and what Bromley's plans were for the next day.

Then Bromley said he had to get back downstairs to rejoin Baker and he did. Sanground left. I called the men in the Wilshire and the Rodeo and said that is it for tonight. There were successional phone calls to each of the rooms and told each of them to come over to Room 420 at the Beverley Hilton so we could meet and decide what we were going to do.

They all then came over to the Beverley Hilton. We talked about what had happened. I told everybody to

stay in their rooms at the Rodeo and go back to the Rodeo and Wilshire and stay in their rooms and stand by for further instructions.

THE COURT: Do I understand that during this period Mr. Bromley was not broadcasting?

THE WITNESS: He might have been broadcasting, but we weren't picking it up,, because the Beverley Hilton is quite a distance from the Wilshire and the Rodeo and he was out of range.

THE COURT: Was he out of range from your room when he was downstairs?

THE WITNESS: NO. The kel sets, I believe had been left behind in the Rodeo and the Wilshire when the men came over.

THE COURT: You had no sets in your room?

THE WITNESS: No, sir. As I recall Bromley told me there is not going to be any more business discussions tonight.

THE COURT: Did you have a set in your room?

THE WITNESS: Not at that time. Two sets were in the Rodeo and two were in the Wilshire.

THE COURT: Yes.

THE WITNESS: So, the men on these teams left the



Hilton. This was about 3:00 o'clock in the morning by now, and they returned to the Rodeo and Wilshire, except for Steve Miller and I decided that we each would take a bed in a room in the Hilton and we would sleep there.

I slept for about two hours during which time John Thompson called me from the Rodeo about something and Mark Sanground called me twice, as I recall, and I haven't the faintest idea what was said on any of those occasions, because I was dead tired and half asleep, as I recall. I probably cussed him and told him to hang up and call me in the morning. I just don't remember.

In any event aboutt 5:30 or 6:00 o'clock in the morning I returned from the Beverley Hilton to the room in the Beverley Rodeo, leaving Steve Miller behind in the Hilton and joining John Thompson in my room at the Rodeo.

Prior to this time during my conversation with Wayne Bromley and Mark Sanground, I told Bromley that Thompson said to me that he figured the battery in Bromley's transmitter was probably wearing out and going dead and that they don't have a very long live -- those little batteries.

This is what Thompson had told me and we probably werent going to be able to receive it much longer.

This is something Thompson told me before I went over to the Hilton.

Then when I ran into Bromley, my intention was I was going to Sanground and say, "Mark, you get ahold of Bromley, if you can, and get him in touch with me." Then, I accidentally ran into Bromley in the lobby which solved the problem. We went up to see Sanground together.

At that time I told Bromley, "Look, your battery is wearing out, and if there is going to be any more action tomorrow, we want it overheard. Will you come to my room in the Rodeo early tomorrow morning before anybody else is up and get a new battery from Thompson.

BY MR. LYNCH:

Q Was it expected that there would be any further meetings with Jones at this point?

A No. No. Bromley told us that Jones gave him a lift in a taxicab and said that he Jones was on his way to the airport to fly back to Las Vegas. They rode in a cab together from the Beverley Wilshire to the Beverley Hilton.

Jones dropped him. He told me about a conversation he had with Jones in the cab. Jones dropped him. When I ran into Bromley, Thompson, the batteries and the

equipment were over in the Rodeo.

Bromley couldn't be away too long, because Baker was waiting for him downstairs. We ran up to see Sanground and we agreed that Bromley would come to my room in the Beverley Rodeo the next morning to get a new battery

I believe that was why there was no further overhearing that night, your Honor, because his battery had gone dead.

In any event, I got back to the Rodeo about 6:00 or 6:30. Now, Saturday morning, March 27th, about 8:00 o'clock Bromley came in and Thompson put in a new battery -- took the old battery out and put a new battery in his transmitter, and Bromley left.

He told us he was scheduled to have breakfast with Baker that morning. It happened that we did not pick up any conversations at all with Baker that morning. Apparently, although I didn't see this -- I just heard it, but apparently because Baker and Bromley went downstairs and got in a car and drove off to visit somebody that morning. We couldn't find them. We didn't know where they went.

Q Were there any other further overhearings out there

that weekend on the 26th or 27th?

A We heard early that morning before Bromley met whoever he met -- I assume it was Baker -- we heard the radio on in his room. We heard a telephone ring. We heard his end of a conversation. I'm not sure about this, but it is my best recollection that he said, "Okay, I will meet you in the lobby," or something like that.

And, we might have heard scrapes of conversation, apparently from the lobby. I don't know. There is nothing that sticks in my memory. That was it.

Along about 11:00 o'clock, it was obvious to me that we weren't going to be able to find where Baker and Bromley had gone together.

I got everybody together and said, "Let's check out of the hotels." We did. I told everybody, "Let's convene to the United States Attorney's office right away." We all drove downtown Los Angeles and went to the U. S. Attorney's office and went into the Grand Jury room.

Everybody was there except Mr. Real and I guess there were nine of us present or maybe ten. We sat down around the table and talked about what had happened. We played the Thompson tape. We discussed the reasons why the two taperecorders in the Wilshire had not recorded

and we broke up.

Q Did you fly back then that day?

A We flew back from Los Angeles to the Friendship Airport outside of Baltimore.. Our plane departed about 11:00 p.m. and got back to the Washington area early Sunday morning.

Q Now, relating to the overhearings that you have described on the early morning of March 23rd, the telephone conversation between Bromley and Jones -- the telephone conversations on March 24th and 25th when Bromley attempted and finally did reach Baker and Jones and all the hearings at the Beverley Wilshire and your overhearings at the Beverley Rodeo on March 26th, what investigative leads, if any did you send out as a result of those overhearings?

A Well, we asked the FBI to go to Bonanza Airlines and this was very soon thereafter, to check passenger manifests and ticket and credit records to ascertain whether Clifford Jones had in fact flown from Las Vegas to Los Angeles prior to the meeting that we had overheard that Friday night, and whether he had in fact, returned from Los Angeles to Las Vegas that same night at a time subsequent to the overheard conversation. We knew what time

that was.

The FBI did that and got us photostats of the passenger manifest and credit card records and some such things so we knew what airplane -- what time he got to Los Angeles and what time he returned from Los Angeles.

We contacted -- the FBI contacted and served subpoenas on the telephone company in Las Vegas, asking for records of any long distance phone calls from Jones' home or Jones' office to Wayne Bromley's home number, so that we could see that the billing records of the telephone company would reflect a long distance phone call on the night of the 22nd and another one on the night of the 23rd, as Bromley told us he had been called by Jones, and we did that to check and see if he had been called by Jones.

So, we got those records from the telephone company.

Q Well, those are really records that you got as a result of what Bromley told you, rather than the overhearings, aren't they?

A That is right.

Q I am talking just about the overhearings. What investigative leads did you send out just on the basis of

the overhearings?

A We also at some point, I think rather later in the year, several months thereafter, I believe, subpoenaed in the hotel registration records of the Beverley Wilshire and the Beverley Rodeo Hotel to confirm the fact that Baker was checked in at the Rodeo and Jones was checked in the Wilshire and that Bromley was checked into the Rodeo.

We got that. Beyond that, I believe the other thing that we did -- a man's name was mentioned in conversation in Los Angeles, Neumeyer. I am reconstructing now, but I feel this must have been, although I have no actual present recollection as a matter of logic. This must have been the justice of our putting on our directing our attention to a man named Al or Alvin Neumeyer, who was Chairman of the Board or something of the First Western Financial Corporation.

Thereafter we decided that Neumeyer should be interviewed.

MR. LYNCH: We need not go into that hear.

THE WITNESS: And, we followed up and interviewed Neumeyer. I think that is a lead. I am not sure, but I believe our lead to Neumeyer may have come from the



overhearing in Los Angeles.

Q When Bromley testified the first time -- talked to you in your office and then testified before the Grand Jury the first time, did he identify the fourth man who was present?

A No.

Q At the meeting that he claims took place between himself, Bromley and between himself Jones and Baker?

MR. MORGAN: I don't understand where we are.

THE COURT: I don't either.

BY MR. LYNCH:

Q When Bromley testified before the Grand Jury, he testified that a meeting took place in April of '63, between himself and Mr. Baker, Mr. Jones and a fourth man, is that correct?

MR. MORGAN: Are you telling the witness this or asking him.

MR. LYNCH: I am asking him.

BY MR. LYNCH:

Q Is that correct?

A Right from the start he told us there was a meeting at the Thunderbird Hotel, April, 1963, the morning after the Cannon testimonial dinner out there, that

he met with Baker and Jones in an office in the Thunderbird Hotel that Sunday morning. He said there was a fourth man present, and he couldn't remember or he didn't know who that fourth man was. He said he thought he had been introduced to him, but he just -- the name just didn't register.

Now, whether we had fixed upon Mr. Neumeyer as probably being the fourth man in the April 1963 meeting, before the Los Angeles overhearing or not, I just cannot recall.

We might have reasoned our way to the probable presence of the April 1963 meeting of Alvin Neumeyer, prior to that time, but maybe we didn't.

Maybe a mention of Neumeyer's name in the Los Angeles overhearing was our lead to Neumeyer. I just don't recall.

Q Now, was there any other investigative lead that was obtained from the actual overhearings that you can recall?

A Well, --

THE COURT: Now, Mr. Lynch, you haven't shown, have you, that this man is in a position to know all of the investigative leads that came out of these

overhearings.

First of all, he is but one of the two key government lawyers. You haven't shown what happened to these overhearings. For all the Court knows, the Bureau or someone else could have initiated leads, and it seems to me that he hasn't quite yet anyhow qualified himself as being in a position to know what leads came out.

I don't mean to be technical; but there were nine people at this particular episode -- all of them law enforcing officers. I don't know. I can't take this as being all inclusive without some kind of showing.

BY MR. LYNCH:

Q Well, in so far as you are concerned, Mr. Moore, did you initiate any other leads as a result of these overhearings?

A Not that I can recall.

Q Now, were you in a position in the investigation of the Baker complex including the investigation that focused on Jones after his testimony on March 17th, 1965, to know what investigative leads were being requested, and what investigation was being done in the course of that large investigation?

A The answer is yes. I think I knew everything that

was going on.. This was a full time assignment for me. The FBI was not running its own leads. They were running the leads that Bill Bittman and I gave them to run. They were acting on request.

There was no Narcotics Bureau followup investigation whatever requested, and no such followup was ever brought to my attention.

Q Would it in the ordinary course have been brought to your attention?

A Yes, we knew what was going on in detail from day to day. We were the responsible people in the government to keep track of it and it was our job to keep track of it and we did.

THE COURT: You say the Bureau wasn't running any of its own leads?

THE WITNESS: That is right.

THE COURT: Who was your contact with in the Bureau?

THE WITNESS: We had two supervisors -- William Bezdek, B-e-z-d-e-k.

MR. MORGAN: Spell that again, please.

THE WITNESS: B-e-z-d-e-k, and Charles Lyles, L-y-l-e-s. These were supervisors in the Accounting and

Fraud Section of the General Investigations Division of the Federal Bureau of Investigation, and they were our liaison with the Bureau, and our arrangement with the Bureau was that we would be in close daily contact with these two supervisors and that we would request -- make requests to the Bureau as to what we wanted them to do and they would consider those requests and carry them out.

And, at least with Bromley, Baker, First Western, U. S. Freight, International Marketing, Harvey Aluminum transactions -- the Bureau was not nor was it requested to simply run its own leads. We were the people who were on top of the situation. We knew more facts than anybody because we had the benefit of the Grand Jury testimony which the FBI agents did not. They didn't go into the Grand Jury with us. We made the requests and they were carried out.

BY MR. LYNCH:

Q How about Paul Brown. What was his position with the Bureau?

A Paul Brown was the case agent in the Washington Field Office on the Baker case, but we did not make our request to Paul Brown. We made our request to Lyles and Bezdek and they relayed these requests to Paul Brown.

Sometimes we do, you know, some briefing of Paul of explaining to him, but mostly these requests went through channels. The Bureau wanted it that way.

Q When you say through channels, some sort of direct liaison or memorandum to the director or one of the liaison men?

A To some extent there was informal contact. Realistically the channel was Bittman and Moore to Lyles and Bezdek.

In form the request was Bittman and Moore to the Assistant Attorney General, Jack Miller or later on Fred Vincent to the director of the FBI to the chief of the Accounting and Fraud Section and so forth, but that is, actually the real contact was between Bittman and I and Lyles and Bezdek, but they didn't want us giving instructions to Paul Brown directly. We did at one time and they got a little flat and we cut it out.

THE COURT: I think this would be a good time to adjourn for our lunch hour. WE will stand adjourned until 1:45.

(The lunch recess was taken.)

## AFTERNOON SESSION

1:45 p.m.

Whereupon,

DONALD MOORE

the witness on the stand at time of recess, resumed the stand and testified further as follows:

## DIRECT EXAMINATION

BY MR. LYNCH:

Q Mr. Moore, will you tell us whether any of the transcripts that you have examined of all the hearings of Bromley on the early morning of the 23rd, on the telephone conversations of the 24th and 25th, or the overhearings of the Beverley Wilshire on March 26th were introduced as such before the Grand Jury?

A No.

Q You would know, would not not, whether or not they were?

A Yes.

Q Were they used in any way before the Grand Jury?

THE COURT: You mean by him or by somebody else?

BY MR. LYNCH:

Q Well, by you or by anyone else.

THE COURT: Let's take it in two parts.



THE WITNESS: By me, yes; by anyone else, yes.

We used a little bit in questioning Bromley before the Grand Jury. I believe it was early June of 1965. We used the various transcripts as the basis for questions to Bromley. He didn't identify them as transcripts.

He did not disclose to the Grand Jury the fact that we had verbatim texts of some of these conversations, but we would ask Bromley questions in the language contained in the transcripts and thereafter on the same day I asked Bromley questions about the Los Angeles meeting which were in many instances in the very words of the Taylor memorandum.

Didn't so and so say quote such and such? I didn't use the word quote, but it was a quote. And Bromley would say, "Yes, I recall that."

MR. LYNCH: May we have this marked motion exhibit 6?

DEPUTY CLERK: Government's Exhibit No. 6 to the motion to suppress marked for identification.

(Government's Exhibit No. 6  
to the motion to suppress was  
marked for identification.)

THE COURT: Will you identify what that was?

MR. LYNCH: It is a memorandum dated April 5, 1965 from Herbert J. Miller, Jr. to S. A. Andretta, Assistant

Attorney General, Administrative Division.

MR. MORGAN: May I see it?

BY MR. LYNCH:

Q Mr. Moore, showing you Exhibit 6, can you tell us what that is?

A Exhibit 6 is a carbon copy of a memorandum which I composed to be initialled by Herbert J. Miller, the Assistant Attorney General in charge of the Criminal Division and sent over to Sal Andretta, who ran the Administrative Division.

It gives an accounting of expenditures which I made in connection with the trip to Los Angeles and the activity there on the 26th and 27th of March 1965.

Q Other than the moneys reflected in that exhibit, were any moneys paid to Mr. Bromley, to your knowledge?

A Yes. I don't believe this exhibit reflects any payments to Mr. Bromley whatever. Some weeks later, perhaps as long as two months later, Mr. Bromley said, not for the first time, that he had expenses which had not been paid by Clifford Jones in the course of his trip to and from Los Angeles.

We got an accounting of those expenses, subtracted from that the amount of money that he got from Jones out in Los

Angeles, and paid Bromley the difference. He also had a claim for about \$20 or \$25 which I believe represented a long distance telephone charge that was billed to his home telephone in connection with this telephoning activity from his home.

And he asked to be reimbursed for that. And we didn't do it. That was just -- I procrastinated about it, because I was busy with other things and after a while forgot about it and just never paid him that small sum. So he is still out of pocket that much.

Q How about Mr. Sandground? Were any moneys paid to him?

A Yes, as reflected in this exhibit, I gave him \$180. on March 26, 1965, for expenses that he was going to incur. And then subsequently, after we returned from Los Angeles, but prior to the date of this memorandum, April 5, he gave me an accounting of his total expenses which aggregated \$368.22.

I subtracted from that amount the \$180 in cash that I had already advanced to him and we paid him the difference which was \$188.22.

Q Were any other moneys paid to Mark Sandground, to your knowledge?

A No.

Q Would you, in the ordinary course, have known if they were paid to Mr. Sandground?

A Yes, I am sure. He might have had some expenses that I don't recall at this moment that we reimbursed, but they would have been very minor and I don't think there were any such.

And all he got from us ever at any time was a reimbursement for his out-of-pocket expenses in connection with Mr. Bromley's cooperation with us.

MR. LYNCH: Excuse me a minute, Your Honor.

We have no further questions, at this time.

THE COURT: All right, Mr. Morgan.

#### CROSS-EXAMINATION

BY MR. MORGAN:

Q Mr. Moore, initially before going into some of the specifics of the matters concerning which Mr. Lynch interrogated you, I have three basic questions that I would like to ask you. The first is: Why were the facilities of the Federal Bureau of Investigation not utilized in connection with the Los Angeles eavesdropping?

A We had requested that the FBI assist us in that matter in writing. The FBI -- We requested that on Thursday

the 25th. On the morning of the 26th we got a memorandum back from the Director which said that the FBI would not participate, because they could not guarantee security in the operation.

That was the wording of the memorandum. There were conversations. I believe there was a conversation between Mr. Mittler and either Charlie Lyles or Bill Bezdek of the FBI that same morning, March 26, in which additional explanation was made.

Mittler made a memorandum of that and I read the memorandum. Mittler told me what the explanation was at the time.

Q What was it?

A The explanation was, one, that the Beverley Rodeo Hotel was a hotel frequented by hoodlums and that some of the people -- As I recall it, they were dubious about the Beverley Wilshire Hotel also. And there was a feeling -- and here I start inferring and not stating something that I remember Mittler telling me -- that the FBI told him, but my inference is that the operation -- it wasn't secure.

It might be a trap. Maybe we were being set up. And they didn't want any part of it

THE COURT: Being set up for what?

THE WITNESS: For an attempt to portray us -- to embarrass the Department of Justice. Maybe the other side had notice of what was going to happen by way of overhearing.

Would attempt to use that against the Department of Justice in some way.

BY MR. MORGAN:

Q Mr. Moore, you were setting this up, weren't you?

A That is correct.

Q How could you have been set up, when you were setting up the eavesdropping in Los Angeles? I don't follow you.

A Well, maybe somebody was telling me something that wasn't so.

Q For example, whom?

A For example, Bromley.

Q You were thinking that Bromley might be --

A I wasn't. I believed Bromley absolutely or I never would have put the Department of Justice in the position of going out there. I was the man who had been dealing with Bromley along with Bill Bittman. The FBI had not dealt with Bromley face to face.

And whatever the reservations were, and I have given you what I know and what I think and the basis for any knowing and thinking it. I don't know what went on in the FBI or what discussions took place or what factors were weighed, beyond what is stated in the rather cryptic memorandum which we received on Friday morning and what Mittler told me that

either Bezdek or Lyles told him.

Basically, we reached a conclusion from the FBI, rather than a reason statement. We were forced to extrapolate minimum information into our own opinions. Whether they were right or wrong, I don't know. But so far as I was concerned, I had spent many hours with Wayne Bromley.

We had cross-examined him. We had gone over every single piece of data and evidence that we could find and discussed it endlessly. Bill Bittman and I spent hours and hours and hours with Mittler going over this and we reached the conclusion the man was telling the truth, that he was on the level, that we believed him and that he could be trusted.

And we acted accordingly.

Q All right, we have two, Bittman and Mittler satisfied about Bromley. Who was concerned about you being set up, as you put it?

A My guess is that somebody in the FBI. As I say, I was not privy to the discussions within the FBI. All I know is that they sent us a memorandum which said "we cannot guarantee security", or words to that effect. I believe the memo is here.

I am just talking from memory.

Q Was the FBI suggesting that its facilities were



not as good as those of the Narcotics Bureau? Did you construe it that way?

A No. Although I do recall some discussions, as a matter of fact, between myself and either Bezdek or Lyles late on Thursday to the effect -- they suggested, without making a flat or categorical statement about it -- that it would be necessary for us to have rooms adjacent to the room where the meeting was going to take place, in order for this to be overheard.

I can recall my suggesting that that doesn't make any sense. There is equipment that can be used at greater distances from that. And I can recall their implying, if not explicitly stating, that, "Well, maybe such equipment wasn't available in the FBI."

Q That was hypothetical at that point, in any event, wasn't it, because they had already turned you down on the request?

A No. They didn't turn us down until Friday morning. That was a discussion later Thursday, as I recall it.

Q You had a discussion with the two supervisors in the Bureau, before you submitted the request?

A The request was submitted about 5:30 p.m. on Thursday. I know that we had discussions, that I had

discussions with one or both of them on one or a number of occasions earlier on that day with regard to this specific matter.

MR. LYNCH: Your Honor, I am not objecting to this line, but it is really not terribly germane to the issue of the legality or illegality of overhearing as to what the Bureau's internal policies may have been. I don't see that that is taking us anywhere.

THE COURT: It is proper cross-examination.

BY MR. MORGAN:

Q Now dropping that for a moment, Mr. Moore, I would like to ask you in terms of utilizing the investigative arm of the Department of Justice, the FBI, why the FBI was not called in to listen in on the conversation which Bromley initiated with Jones on the 23rd?

A You mean the court reported conversation?

Q Yes.

A Because it was too late in the day and we know from experience that if you go through ordinary channels on a matter of that sort it takes forever to get the approval of the different people who have to approve, and we couldn't have organized it that night.

So we called our superiors, got their permission and

organized it ourselves. That was the safest, quickest, and most efficient way to do it then.

THE COURT: There was an agent present, was there not?

THE WITNESS: No, Sandground, the court reporter, Bittman, myself, and Bromley.

THE COURT: And the agent --

THE WITNESS: He monitored the telephone calls of the 24th and 25th which emanated from Sandground's office.

THE COURT: I understand that was what Mr. Morgan was asking about.

THE WITNESS: No, he was asking me about the court reporter conversation at about midnight on the 23rd.

BY MR. MORGAN:

Q You mentioned that you didn't have time to get the approvals. What approvals were you talking about?

A We got approvals. I called Howard Willens, or Bill Bittman did, or both of us did. I forget which. He said, "I will call you back," and he did. Howard was our superior and I believe that he called Herbert J. Miller, Jr. who was the Assistant Attorney General in charge of the Criminal Division.

Whether Miller called anybody or not, I don't know.

We got permission to do this, before we did it. We made a recommendation which was to go ahead and do it. And that was approved. But in order to get an agent from the Washington Field Office, we would have had to put a request in through channels to the Bureau and that would have had to have been reviewed.

These were unusual circumstances and I am sure the Bureau acts quickly and efficiently, but we felt that we knew that it wouldn't be fast or efficient enough, so we went ahead and put it together ourselves.

Q Or did you know that the FBI wouldn't do it at all?

A No, I didn't know any such thing. And, in fact, the FBI did it on the 25th and 26th with Agent Condatore. We had time. It was in the hours of daylight when the request was submitted and approved, and people were in the office.

The Bureau cooperated splendidly on that.

Q Passing to the second point that concerns me a bit here, as a man who has practiced law prior to the time you went with the Justice Department and appreciating that you and Mr. Bittman were going to be the prosecuting officials in this case, did it occur to you at any point that your participation in this investigation would necessitate your

appearing as a witness on the case and the merits as it has developed and as you are now appearing as a witness?

A Yes.

Q Did you feel that you had compromised your status as a prosecutor thereby?

A No.

Q Do you understand it is entirely proper for an attorney who contemplates handling a case to put himself in the role necessitating his appearance as a witness?

A Well, I think I know what the canons of ethics are, as well as you do, Mr. Morgan. I didn't prosecute Baker and I am not prosecuting Jones.

Q How about Mr. Bittman?

A What about him?

Q Was Mr. Bittman the prosecutor of the Baker case and the Jones case?

A He was the prosecutor of the Baker case.

MR. LYNCH: I object.

MR. MORGAN: I think it is very germane, Your Honor.

THE COURT: In what way?

MR. MORGAN: To indicate the inordinate extremes to which the attorneys in the Department who had a subjective

interest in prosecuting Mr. Baker particularly went in this particular situation.

THE COURT: You have made your point as to that. I don't think this witness can testify as to what Mr. Bittman viewed his ethical standards to be.

I am going to sustain the objection.

MR. MORGAN: All right.

BY MR. MORGAN:

Q In the course of interrogation this morning, I believe by the Court, inquiry was made with respect to the notes that you made of your interviews with Bromley. And if I am correct I understood you to testify that you made no record in the form of notes or memoranda of those interviews?

Is that correct?

A Yes, sir; that is correct. Except subsequent to those interviews, on dates that I don't have in mind, but the paper is here for you to look at, because I looked at it to refresh my recollection, we made a number of memoranda summarizing the Bromley interviews and testimony before the Grand Jury stating in narrative form or summarizing in narrative form the circumstances of the Dee Kaufman, the calls from Sandground to Bittman, the court reporter

conversation at midnight that night, the calls on the 24th and 25th, and what happened in Los Angeles.

I also, on occasion, would make notes in a diary that I kept when I had time to make such notes.

Q Do you have the diary?

A I see it on the table there.

Q But basically there was no memorandum prepared, memoranda of the lengthy conferences that you had with Bromley some, I believe you stated, at his home or Sand-ground's home? Is that correct?

A As such.

THE COURT: Not at the time?

THE WITNESS: That is right. There is no memorandum that says, "Yesterday we sat down with Bromley and we said this and he said this."

BY MR. MORGAN:

Q Is there any memorandum in the Department of Justice prepared by you, Mr. More, that recounts the relevant facts concerning the matters you have been interrogated about, namely, your interviews of Mr. Bromley?

A There are memoranda which refer to the fact that we interviewed Mr. Bromley and that is where I get the February 16 date as the date when Bromley first came and



told us about these facts involving Mr. Baker and Mr. Jones and others.

Q I am also interested in what would have seemed to me to have been the material aspect of the interview, namely, what Mr. Bromley told you. Did you prepare memoranda at any time reflecting that?

A We prepared a memorandum summarizing the information. This memorandum was based on what Bromley told us, plus the question and answer verbatim transcript from his appearance before the Grand Jury, one week after he first told us anything, which -- I believe it was a week -- I think it was February 23, 1965, that Bromley first went to the Grand Jury.

But the point is that what he was telling us, the evidence, the facts and the details of what he told us we got in what we thought was the best form possible which was testimony under oath before the Grand Jury which was being recorded verbatim.

THE COURT: Mr. Moore, there is one question -- if you don't mind the interruption, Mr. Morgan.

After Mr. Bromley testified before the Grand Jury, on that occasion --

THE WITNESS: Yes.

THE COURT: -- did he remain under subpoena?

THE WITNESS: Yes, he did.

THE COURT: How long was he under subpoena?

THE WITNESS: At least until he returned and testified further in early June 1965, and maybe even after that.

THE COURT: So that in all of the events that took place in Los Angeles and incident to his going out there, he was a subpoenaed witness for the Government?

THE WITNESS: That is correct.

THE COURT: Under subpoena, under process?

THE WITNESS: That is correct.

THE COURT: Was he being paid witness fees for those days?

THE WITNESS: Which days, Your Honor? The days he went in before the Grand Jury?

THE COURT: The days he didn't go before the Grand Jury, but was performing services on behalf of the United States.

THE WITNESS: The answer is, no, sir. He was paid no fees whatsoever of any kind at any time for those services.

THE COURT: Excuse me, Mr. Morgan. That is all.

BY MR. MORGAN:

Q Now passing to the chronology concerning which you were interrogated, Mr. Moore, what is the first occasion, to your knowledge, that Wayne Bromley was contacted by your office?

A If by contacted, do you mean spoken to?

Q All right, let's put it that way to start.

A Well, we spoke to him in the Grand Jury. I say "we." I wasn't even in the District at the time. I was in West Virginia. I think B. Franklin Taylor, Government lawyer, interrogated him in the Grand Jury in approximately October 1964.

Q That was before you came with the Department of Justice?

A No. I was Acting Attorney General in West Virginia and was brought back here in December.

Q When was the first occasion that you first heard of Mr. Sandground, the attorney for Bromley? When did he enter the picture?

A Sometime within a week or 10 days before or after February 1, 1965. He got in the picture after a subpoena was served on Wayne Bromley that compelled his further attendance before the Grand Jury.

Q Is that the first occasion that Mr. Sandground contacted the Department, to your knowledge?

A With reference to Baker or Bromley, so far as I know, yes.

Q Had Mr. Sandground, to your knowledge, talked earlier to Mr. Willens?

A Yes. They knew each other in college, I understand. So obviously they must have talked to each other then. If you are talking about this particular case --

Q That is all I am interested in, is this case.

A I believe Sandground called Willens after Bromley retained Sandground, which was after another Grand Jury subpoena had been served on Bromley at our request.

Q When is it that Mr. Sandground was retained, to the best of your knowledge?

A Right around, shortly after the Grand Jury subpoena was served on Bromley. But I am guessing. Mr. Baker -- Well, that is hearsay. I don't know. My impression, based on what Sandground and Bromley have said, is that he retained Sandground sometime after the Grand Jury subpoena was served to him.

Q I don't want to belabor this, but I would like to ask this question: When did you first learn that Sandground

represented Bromley?

A When Howard Willens -- This is my best recollection. My best recollection is Howard Willens called me up and said, "I got a call from Mark Sandground. He represents Wayne Bromley." That is what I think. Now I believe that that is the truth.

I can think of one other possible alternative way we learned of it.

Q What was that?

A From a lady named Angel, Germaine Angel, who was the secretary in a Senate office up on the Hill and an acquaintance, close friend of Bromley's, whom we had talked to. She might have told us that Bromley went to Sandground. I have no recollection that she did.

But I am sure of one thing and that is I found out one of two ways, either Germaine Angel mentioned it to us, or else Howard Willens called me in and said, "Mark Sandground just told me." I think probably it was the latter, that Willens told me.

Q What was the occasion for talking with Miss Angel?

A We called her in and interviewed her, because we thought her initials appeared in the lower left-hand corner

of a letter from Wayne Bromley to an attorney named Roderick Martinelli, who represented the Redwood National Bank in San Rafael, California, with reference to a \$5,000 fee which was subsequent to the date of that letter, paid by check payable to Bromley.

Bromley endorsed it, Baker endorsed it, Baker cashed it, in the Treasurer's Office up on the Hill. Immediately thereafter, Bromley paid \$2500 in cash to the Carroll Arms Hotel in payment for a much larger bill he owed at the Carroll Arms Hotel, all of that on the same day.

This letter had to do with getting the check. We were interested in the letter, because Baker's endorsement appeared on the check, and Bromley only turned up with half of the \$5,000 in his hands that day when he paid his bill at the Carroll Arms Hotel.

And we wanted to know where the other \$2500 went. We got this letter from Mr. Martinelli's files.

THE COURT: Isn't this getting quite --

MR. MORGAN: It is at the moment, Your Honor.

BY MR. MORGAN:

Q I want to ask you specifically, though, as a result of the interview of Miss Angel, did you ascertain that that moment that Mr. Bromley had lied before the Grand Jury?

A Yes.

Q When was that?

A The interview with Miss Angel?

Q Yes.

A It had to be late January or early February 1965.

THE COURT: I wish you would let the Court in on these matters. Everybody naturally assumes Mr. Bromley lied the first time he appeared before the Grand Jury.

When was that?

THE WITNESS: Around October 1964. I don't know how material the lie was, but we showed him the letter, asked him who G.A. was. It was one of these stenographer's signals down at the bottom of the letter that had Bromley's initials and then a slash and then in lower case letters, g.a.

We asked him who g.a. was. He said to the Grand Jury -- I say "we." I wasn't even there. But Taylor asked him and Bromley said, "These were some initials I made up. Actually I typed these up myself, but I wanted to appear important, so I put a stenographer's initials on the letter."

It turned out Germaine Angel had done it as a favor for Bromley and had put her own initials on it.



BY MR. MORGAN:

Q At that time, now, January 1965, had you other reason to doubt Mr. Bromley's credibility?

A Yes. We had strong reason to believe that Mr. Bromley was involved in transactions with Baker that might be violations of law. He had taken the Fifth Amendment before the Senate committee in early December 1964, which is a good way to, you know, attract the attention of a prosecutor.

Q Did you not also know in January of 1965 that Mr. Bromley had been interviewed by various agencies of Government, some under oath, and had given false testimony?

A I don't recall the substance of what he said, because I haven't looked at those statements. I knew he had made statements, and I am sure if I were to look at those statements for five minutes I could give you an accurate responsive answer to your question.

In general, not having my memory thus refreshed, I can say only this: that Bromley certainly had not disclosed the conduit transactions involving Jones, U.S. Freight, International Marketing, and Harvey Aluminum. And he had not told anybody what I now am convinced is the true story of the Redwood fee split.

Q Here is what I am trying to come to. At what point did this metamorphosis in your thinking come about?

A What metamorphosis?

Q In which you decided Mr. Bromley was a cooperative witness, namely, one telling the truth? When did that happen?

A When he told us the truth.

Q About what?

A About his transactions with Baker, about where this money came from, and where this money went. That is when I started to believe him. And then when we got into the microfilm at various banks and we found on the microfilm the checks that Bromley had been talking about, and then we subpoenaed in the checks themselves, and subjected them to handwriting analysis and found out that in some of the transactions, for example, the U.S. Freight transactions where Bromley said, "I don't even recall endorsing any such check," we found out that the person who had signed Bromley's name was Baker's secretary, Carole Tyler.

When we checked hotel bills and found out Bromley was in the Thunderbird Hotel when he said he was, and Baker was in the Sands Hotel the same day with his bill complimented by Clifford Jones.

Q The Sands Hotel?

A That is right. I believe April 23.

Q Mr. Baker complimented Mr. Jones' bill at the Sands Hotel?

A Yes. It is on the registration card. We have the card. It was an exhibit in the Baker trial, I understand.

Q When did this occur?

A When did what occur?

Q Your change in the view of Mr. Bromley occur.

A As we corroborated everything he said and as we cross-examined him and cross-examined him trying to find or expose a misstatement on his part. Watching him carefully. We worked the way any lawyer works with a witness, the way you are working with me now.

Q Oh, this is very pleasant, Mr. Moore.

A It was very pleasant with Mr. Bromley.

Q Did this happen before or after his appearance before the Grand Jury on February 23, 1965?

A I would say it started before and continued after.

Q Well, was he, in your view, a cooperative witness as you defined that at the time of his appearance before the Grand Jury on February 23?

A Yes. We became more certain later on, but we were pretty convinced.

Q As of the time of his appearance before the Grand Jury, you, of course, had previously been in touch with his lawyer, Mr. Sandground? Is that right?

A Oh, yes.

Q Did Mr. Sandground indicate to you that Mr. Bromley was disposed to be a cooperative witness?

A Well, I will tell you that we didn't know that Mr. Bromley was going to tell us the whole story of his relationship with Mr. Baker and others, until Tuesday morning the 16th of February, when he and Sandground walked into the second Assistant's office to meet with Bittman and I and started talking.

We had talked with Sandground before and Sandground said, "Well, it is not decided yet. Maybe he won't tell you anything. Maybe he will take the Fifth Amendment.

THE COURT: Just for the Court's information, was Mr. Bromley ever indicted?

THE WITNESS: No, sir.

THE COURT: In any of these cases anywhere at any time?

THE WITNESS: No, sir; that is correct.

BY MR. MORGAN:

Q I don't think, Mr. Moore, I quite got a response to my question.

A Excuse me.

Q It was: Did Mr. Sandground, at any point, contact you or any member of the Department of Justice, to your knowledge, to say that Mr. Bromley, in effect, wanted to talk? Did that happen?

A No. Now we discussed whether Bromley was going to talk or not. But he never told us in front --

Q You say "we discussed." Who is that?

A Bill Bittman and I.

Q Did you discuss this with Sandground, apart from Bromley?

A Whether Bromley was going to make a statement to us or not?

Q Yes.

A Yes. Certainly we discussed it. He just didn't tell us what was going to happen.

Q When did you first discover that Mr. Bromley was going to be a "cooperative witness?"

A When he started cooperating, which was when he started telling us the truth.

Q This was, you say, on February 16?

A That is correct, about 9:30 or 10 o'clock in the morning.

Q And where was that session, again?

A It was in the office of the second Assistant. There was no second Assistant in the Criminal Division at that time. On the Constitution Avenue side of the Department of Justice Building on the second floor.

Q And does this memorandum that you refer to cover the substance of this conversation?

A In this way: The memorandum recounts how we talked to Bromley, what the circumstances were in brief summary. Of course, that gives the date. Later on it recounts in great detail the information which Bromley gave us about U.S. Freight, First Western Financial, these other transactions.

Now the details that are in that memorandum, in fact they are in a couple of them, are not based solely upon what Bromley told us in the course of that first conversation. They are based on that, plus subsequent conversations, plus the Grand Jury testimony, and especially the Grand Jury testimony.

We had a lot of ground to cover with Mr. Bromley. He

had many things to tell us about many people and many transactions. And we couldn't possibly have covered all of that in the first interview, or the first interview plus the second interview.

We would go away and think of five more questions and come back with those. How about this? How about that? And then he would respond.

Q Did you at any juncture, prior to Mr. Bromley becoming a cooperative witness, discuss with Mr. Sandground some of the difficulties that Mr. Bromley was in?

A Yes, we did.

Q You outlined, I would gather, to Mr. Sandground, that the investigation of the Department had indicated, shall I say, violations of law by Mr. Bromley?

A We didn't specify a conclusion as to whether they were violations of law or not. We said that there were serious questions raised as to certain conduct by Mr. Bromley. This was a very intensive investigation and we intended to get to the bottom of this and find out what the facts were with or without Mr. Bromley telling us.

Q What were those matters that you enumerated to Mr. Sandground?

A First of all, there was the matter of his 1963



Federal Income Tax return which we thought he hadn't filed, but which, in fact, he had filed. It just hadn't found its way to the proper cranny in the IRS files in Baltimore.

Q He had filed it about nine months late, in fact?

A That is right. He filed the thing on January -- He mailed it on December 31 and it reached Baltimore about January the 2nd of 1965. We were looking for it toward the end of January, and they couldn't find it in Baltimore, although it was there.

And Sandground straightened us out on that. Well, after he did that, we got a copy of that tax return either from Baltimore or Sandground or from both and we went over it and right away several things struck our eye, you know, that we thought were suspicious.

And we indicated that -- We indicated. We told that to Mr. Sandground. We also told him that the story of Germaine Angel as to the genesis of the Redwood Bank letter and the story of Bromley were inconsistent. We also told him some other information that we had about the Redwood Bank transactions in which Bromley had received this \$5,000 check that indicated, to our way of thinking, because it was pretty good information, we thought it indicated possible criminal conduct by the people involved in the Redwood Bank

case and that Baker was one of the people involved in the Redwood Bank case on the basis of his endorsement of that check, plus other information we had.

THE COURT: I think the issue Mr. Morgan is approaching you about: Were these conversations in the atmosphere if he "cooperated" then he wouldn't be indicted?

THE WITNESS: No. That is not a fair statement, Your Honor.

THE COURT: What was held out to Mr. Sandground to justify his encouraging his client to put his neck in the wringer?

THE WITNESS: Let me say that we were very careful and precise in what we said to Mr. Sandground.

THE COURT: What was it that you said?

THE WITNESS: We said, "We can make you no promises and we will not make you any promises."

THE COURT: About what?

THE WITNESS: Of immunity. "And we are not threatening you. But Bromley appears to be involved in some very questionable transactions and it looks like he lied to the Grand Jury on his first appearance. And his involvement in the Redwood Bank matter is very suspicious."

This is the substance now, not the precise words.

THE COURT: Yes.

THE WITNESS: "And we are running a very intensive investigation of these and other matters. And we are going to get to the bottom of them, and we are going to find out what happened, with or without the assistance of any particular person.

"And we think that you should, therefore, assess Mr. Bromley's position in this matter very carefully. And while we cannot promise you and will not promise you or Mr. Bromley any kind of immunity, and we are not going to say that we are going to indict anybody, A, B, C, D, or Bromley, we are not going to threaten you either.

"We are going to get the facts and when the time comes for us to make recommendations to the Grand Jury with regard to any individuals, we are going to exercise the kind of judgment that any responsible prosecutor," this is very close, Your Honor, word for word now, to what we were saying to Sandground, "we are going to exercise the kind of judgment and discretion that any responsible prosecutor ought to and must exercise.

"We are going to take into account the degree of the individual's culpability, the degree of his involvement, his conduct subsequent to the offense, whether he has been

truthful and candid with regard to the investigation, or whether he has not.

"And we will say this: If Bromley, as he has every right to do, refuses to testify and takes the Fifth Amendment, then it is perfectly obvious that we are in a position where we can consider only the evidence that we have. And we haven't heard from Mr. Bromley.

"And, therefore, anything that Mr. Bromley has to say about it, we won't know and can't consider. If Mr. Bromley comes in, doesn't take the Fifth, and tells the truth, then we are in a position to consider that fact, together with all of the other relevant facts in reaching a judgment as to what, if anything, we should do.

"And we will say one more thing to you, Mr. Sand-ground, and that is this: The worst thing that Bromley could possibly do would be to try the middle of the road. Not to take the Fifth Amendment and then come in and tell us a lie about something.

"Because then, as you know, he is in real trouble. We are going to check every single word that he has to say up one side and down the other, and a witness who comes in and lies isn't going to get any consideration at all, under these circumstances.

"So Mr. Bromley is going to have to reflect on this and make his own voluntary choice with these factors in mind."

THE COURT: Let me ask two related questions to that: Did Sandground ask for immunity?

THE WITNESS: Yes. That is my best recollection.

THE COURT: And it was declined?

THE WITNESS: That is correct.

THE COURT: Did you require Bromley to sign a statement as to what he was going to say, before he went into the Grand Jury?

THE WITNESS: No.

THE COURT: Excuse me, Mr. Morgan. I wanted just to follow that.

BY MR. MORGAN:

Q Had you concluded the statement?

A I think so.

Q There is one matter I would like to inquire about.

Did you present, among the problems you had with Mr. Bromley's prior conduct, as you expressed it to Mr. Sandground, anything about his trip with Miss Angel to Las Vegas?

A I honestly have this recollection. Germaine Angel -- and I tell you what I base it on really. I don't have a

present recollection except that Germaine Angel had appeared in the Grand Jury. I looked at her Grand Jury testimony yesterday.

And I see in the Grand Jury testimony that we were asking her about clients that Mr. Bromley had that she knew of, and she mentioned the Thunderbird Hotel and she mentioned Cliff Jones. Because of that, and reaching back and trying to reconstruct, although I have no present recollection, I am morally certain that we must have ascertained from Germaine Angel the fact that Bromley had had some transactions with the Thunderbird Hotel or Clifford Jones, we weren't sure of the exact nature.

Now we also knew at that time that Baker had had some transactions with Clifford Jones, the Waikiki Savings and Loan Association business. And we knew that Bromley was close to Baker. And, therefore, on these premises I infer now and I am certain now in my own mind, although I have no actual recollection, that we must have said something to Sandground about, "We know that there were certain transactions about the Thunderbird Hotel," or some such thing as that.

Q Mr. Moore --

A Very vague, because we didn't know the particulars and under these circumstances you don't tell the man that you are dealing with what you don't know.

Q Let's see if I can cut through this. Did you not know that Miss Angel was Mr. Bromley's girlfriend and that Mr. Bromley had taken Miss Angel to Las Vegas on this trip we are talking about and they had stayed at the Thunderbird Hotel?

Didn't you know that?

A I believe that we did.

Q You pointed that out to Mr. Sandground?

A I am doing this on the basis of the mental operation that I have told you, because I really don't have an actual present recollection of whether we did or not, but I think we got the lead from Miss Angel.

Q The fact that he had taken this trip with Miss Angel to Las Vegas was among the things you discussed with Mr. Sandground in seeking to incline him to prevail upon Mr. Bromley to be a cooperative witness? Is that not true?

A How we put it to Mark Sandground and the exact extent of our knowledge at that time, I just have no present recollection. I suspect what we did, now reconstructing --



Now I suspect what we did, we just threw out a name, a place and put a knowing expression on our faces.

THE COURT: You were talking to Mr. Sandground in the manner of prosecutors anxious to indicate that you had plenty information. You didn't want to give him all the information you had anyhow.

THE WITNESS: That is right.

THE COURT: And you would imply or suggest by mentioning names or tidbits of episodes to show that you were on to some kind of a story?

THE WITNESS: That is right. You do this all the time. One thing you say is, "Look, we know about this. We know about that. And, you know, if anybody thinks that he can tell us a false story --"

THE COURT: Sure.

THE WITNESS: "-- we are going to catch him just like that as soon as he lies, because we know everything."

That is the impression you try to give and that is the impression we were trying to give.

BY MR. MORGAN:

Q In any event, would this be a fair statement, Mr. Moore: that Mr. Sandground, who had, as a lawyer, I assume, Mr. Bromley's liberty in his hands, as a result of this

conference with you he was inclined to prevail on Mr. Bromley to become a cooperative witness?

Is that correct?

MR. LYNCH: I object to that.

THE COURT: Sustained.

I think that is argumentative and that goes to what was in Mr. Sandground's mind.

Had he indicated that Bromley was going to take the Fifth?

THE WITNESS: He indicated that was a real possibility. Now as I sit here now, Your Honor, I don't want to say that I remember something that I don't actually specifically remember. I have a general recollection that there was this back and forth.

I just feel certain in my mind that he indicated that, "Well, Bromley doesn't have to tell you anything, and maybe he won't."

THE COURT: And he had taken the Fifth before?

THE WITNESS: Yes. I am just positive in my own mind, although I don't have a mental picture of Sandground sitting there and speaking those words, I know he indicated that.

BY MR. MORGAN:

Q It remains a singular truth, does it not, that irrespective of anything else, Mr. Bromley has never been indicted? Isn't that correct?

A It remains a truth. Whether the truth is singular or not is for someone else to say.

Q Well, all right. I will withdraw the word singular.

THE COURT: Singular has a lot of different meanings, Mr. Morgan, also. It is an ambivalent word.

BY MR. MORGAN:

Q Would Mr. Sandground, from this long speech you gave him, have concluded that if he brought Bromley in and he cooperated you would go easy on him?

A I don't know what Mr. Sandground concluded.

THE COURT: I think the same objection goes to that, Mr. Morgan. Mr. Sandground is going to be available to you as a witness. He can tell you.

MR. MORGAN: I was more concerned with what Mr. Moore was trying to plant in Mr. Sandground's mind. I guess I stated it poorly.

THE COURT: The Court takes it, from Mr. Moore's statement, that within what he considered proper positions

on the part of the prosecutor, which involved no promises, he made it clear, to the extent he could in reason, depending on the degree of cooperation, take that into account, before he went before the Grand Jury and defendants' names were started to be put into indictments.

THE WITNESS: That is correct, Your Honor. Providing this word cooperation is a word that I tried not to use.

THE COURT: It is not an insidious word. In other words, if he testified according to your information truthfully and honestly and completely.

THE WITNESS: Yes, sir.

THE COURT: That is what I mean by the term. I don't imply anything else.

THE WITNESS: Yes, sir; with that definition. Because I consciously steered away, you know, even in talking to Sandground then, from using that word cooperation, because the term is ambiguous and subject --

MR. MORGAN: Would you like the word informer better?

MR. LYNCH: Your Honor, I object.

MR. MORGAN: I am asking the question.

THE WITNESS: I have no trouble with the word informer.

BY MR. MORGAN:

Q Did he become an informer?

A Sure, he became an informer. He informed us of everything he knew, I think.

Q I want now to come more directly to the appearance of Mr. Jones before the Grand Jury and you have undertaken in a limited instance to indicate what was adduced before the Grand Jury. You have mentioned the Waikiki Savings and Loan matter.

Do you know what the subpoena to Mr. Jones said? Do you remember?

A I have a general recollection. It called for all documents pertaining to the Waikiki Savings and Loan transaction and transactions between you and Mike Singer, Philip Matthews, Robert G. Baker, and I think there was one other person or firm mentioned.

Q What I particularly wanted to know: Did it indicate in any way an inquiry with respect to Bromley?

A Bromley's name was not in the subpoena. It asked for all documents pertaining to transactions between you and Baker and between you and several other persons.

Q There came a time, then, on March 17, 1965, specifically when Mr. Jones appeared before the Grand Jury?

A That is correct.

THE COURT: Mr. Morgan, I am going to interrupt, because all of you gentlemen, except the Court, have more background.

MR. MORGAN: I appreciate that, Your Honor.

THE COURT: Did Mr. Jones appear at his request, or was he subpoenaed?

MR. MORGAN: Mr. Jones was served with a subpoena duces tecum, Your Honor, to bring with him records on the Waikiki Savings --

THE COURT: Did he waive immunity?

MR. MORGAN: Yes, he didn't claim immunity.

THE COURT: He didn't claim immunity at that time?

MR. MORGAN: That is right.

THE COURT: And appeared in response to the duces tecum?

MR. MORGAN: That is my understanding.

THE COURT: Is that your understanding, Mr. Witness?

THE WITNESS: Yes, sir; I think you have to --

THE COURT: I want to be sure, because I won't be able to follow the testimony.

THE WITNESS: He telephoned me after he received that subpoena. We had a conversation about it.

BY MR. MORGAN:

Q We come now to your testimony, Mr. Moore, about Dee Kaufman and I would like once again for you to state, if you will, when you first became mindful of that?

A Monday morning, March 21, 1965, sometime after 8 a.m. and before noon.

Q Now that knowledge that you obtained -- I gather you had no personal knowledge? Is that correct?

A That is correct.

Q It came to you in a conversation with your associate Mr. Bittman? Is that correct?

A That is correct.

Q Was a memorandum made of that? Of the Dee Kaufman matter?

A There is a lot of material on that. I believe we asked Bromley about it in the Grand Jury. Dee Kaufman was subsequently interviewed. We checked the long distance telephone records of the telephone company out in Las Vegas to corroborate the fact that certain calls had been made from Jones to Dee Kaufman and other things.

Q Who, again, as you understood it, was Dee Kaufman?



A She was, as I understood it, the secretary to Fred Black, who was a consultant.

Q And do you know where she functioned as a secretary?

A Yes, in the Carlton Hotel, Sheraton-Carlton.

Q Mr. Black had a suite, did he not, there, one part of which was an office with an adjoining bedroom?

A Yes, sir. That is what I understand. I can't even remember where I learned it. It was probably from a reporter or reading the newspaper.

Q Now I would like for you to state, Mr. Moore, exactly what Mr. Bittman said to you, as you remember it.

A As best I can recall, he said that he had talked with Mark Sandground. I do not recall whether he said that he had talked directly with Bromley at that time. But either Bromley or Sandground, and I believe it was Sandground, had told Bittman that Dee Kaufman, Fred Black's secretary, had gotten in touch with him and arranged to meet with him and that they had met, I believe, in a cocktail lounge, at the Carlton Hotel about 4 o'clock one afternoon, and that Kaufman had said that last Wednesday, I think this meeting as Bittman related it to me had happened on about Friday afternoon.

Jones had been before the Grand Jury, as I recall it, on about Wednesday of that same week. Bittman told me that Sandground told him that Bromley told Sandground that Kaufman told Bromley that Jones told Kaufman that he had been before the Grand Jury, that he had testified, that he had been asked about Bromley and whether Bromley had been retained as a lawyer, and that I want Wayne to know that I told them the truth in the Grand Jury, that you were retained and you were retained for services, that you, Bromley, would perform.

And I wanted you to know that I told this to the Grand Jury, that the retainer was for your services, and at this point the words that Bittman told me -- mind you, now, this is about four or five degrees of hearsay at this point.

Q All right. Let's have it.

A I am just telling you what Bittman told me. I wrote down what I thought was the kicker in what Bittman was telling me in my diary at the time, that the statement was that it was Bromley who was paid, Bromley who was retained "and don't you forget it."

"That is the way it is going to be." Now subsequently we got many more details about this conversation from Dee Kaufman. I am having a little difficulty. I don't think

Dee Kaufman ever told us that material that I just gave you quotes that I have in my diary.

Although I don't recall. But I am having a little difficulty in separating out what Bittman told me that Monday morning from what we found out from the Dee Kaufman interview and the Dee Kaufman Grand Jury testimony and the Bromley Grand Jury testimony.

Q You say those words don't appear in her testimony?

A I don't recall whether they do or not. Honestly. I do recall that Bromley was asked and Bromley said that he didn't remember Dee Kaufman saying that.

Q Bromley said he didn't remember saying that?

A That is my recollection. He was asked that at the Grand Jury and that was his response.

Q Did Mr. Bittman regard this as a signal development in the case?

A He regarded it as sufficiently important to tell me about it and to discuss it with me. Yes, I would think he regarded it as important.

THE COURT: How does this relate to the motion to suppress? I can see its interest to you, Mr. Morgan, on discovery, but how does it relate to the questions on the motion to suppress?

MR. MORGAN: One of the main reasons I am asking these questions, Your Honor, is Mr. Lynch went into them.

THE COURT: Yes, he did.

MR. MORGAN: And there are facets of it, I think, that have not been developed as they might be.

THE COURT: The Court is hearing this. I am anxious to give you the fullest latitude, as you know. But I do want to keep trying to not get too far away, at least from the motion to suppress which is the only matter that is before me.

I think we are getting pretty far removed. Whether or not Mr. Bittman considered this important doesn't seem to the Court to relate to the motion to suppress.

MR. MORGAN: I think I would accept Your Honor's conclusion on that as an accurate one. I would like to ask this one question, though.

BY MR. MORGAN:

Q Did you as a matter of fact know, Mr. Moore that Mr. Jones stayed at the Black suite on the occasion of his appearance before the Grand Jury? Did you know that?

A I don't think we knew it at that time. I think maybe Dee Kaufman might have told us subsequently or maybe -- As a matter of fact, I am not sure I know it even now.

Q All right, let's pass to the next step. You have the statement attributed to Mrs. Kaufman that you received ultimately through Mr. Bittman. Now what is the next occasion wherein -- insofar as Mr. Jones is concerned now -- you received a call from Sandground about a call that had been made to Bromley by Mr. Jones, or are there intervening developments here?

I am leading up to the night of the eavesdropping on the conversation that Bromley initiated to Jones.

A What I recall is that on Tuesday morning, this is the 22nd of March now, Bittman and I had a discussion with regard to a suggestion that had been made, as I understood it, by Sandground to Bittman --

THE COURT: You testified to that as to whether or not it would be desirable to record Jones when Bromley was then under a subpoena. And you said you would take the matter under advisement?

THE WITNESS: That is right.

THE COURT: You talked to Mittler and you were still uncertain?

THE WITNESS: We were stalling. I think that is an adequate word. We didn't want to make a decision. We hadn't made up our own minds.

BY MR. MORGAN:

Q Was this discussion about intercepting a Jones conversation precipitated by what Mrs. Kaufman had said?

A I don't know what induced Sandground to say whatever it was that he said to Bittman. But I can't imagine that -- I can imagine the Kaufman contact had nothing to do with it.

THE COURT: You testified on direct Sandground felt the monitoring was required, because of Dee Kaufman.

THE WITNESS: All right. But this is information I am getting from Bittman. He was the one who talked with Sandground. To use a word like precipitated -- it seems to me you are talking about what went on in Sandground's head and I can't tell you what went on in his head.

All I can tell you is what Bittman told me Sandground told Bittman.

BY MR. MORGAN:

Q What happened, in point of time -- and I am relating it to the actual eavesdropping that occurred on the 23rd -- how long before that did you go into a discussion about monitoring Jones?

A We discussed it on Tuesday morning and decided we would tell Sandground we would take it under advisement. "We are not going to do anything precipitous here. We

will take it up with our superiors."

Q Did Sandground say he wanted you to monitor Jones?

A Sandground suggested this as a possibility. He might have said he wanted to. I was not the person who talked with Sandground that Tuesday morning. It was Bittman.

Q Who was?

A Bittman. And I talked with Bittman.

Q All right. Now insofar as you understand it from Mr. Bittman, did Mr. Sandground say why he wanted you to monitor Jones?

A I honestly don't recall. My best recollection is I believe that it was Sandground's feeling as expressed to Bittman that Jones was trying to communicate to Bromley on account of what he, Jones, had told the Grand Jury so Bromley would say the same thing to the Grand Jury when he got called.

Q He had already appeared.

A But Jones didn't know.

THE COURT: How do you know that?

THE WITNESS: I don't, except we went to some lengths to keep Bromley's appearance before the Grand Jury a secret and I infer --

THE COURT: I suspect, though, that those



representing Mr. Baker and others went to great lengths to determine who went before the Grand Jury.

THE WITNESS: I would say that we were a little better than they were in that department, Your Honor, and they didn't find out. At least not in this respect.

THE COURT: You don't know whether or not Mr. Jones knew that Bromley had been before the Grand Jury, do you?

THE WITNESS: No, except my inference from their subsequent conversations which were recorded. And we were going on the premise, at any rate, that Jones didn't know Bromley had been there.

BY MR. MORGAN:

Q I do want to ask this: At the time of Mr. Jones' appearance before the Grand Jury, he was not admonished, was he, not to talk about what he had been asked before the Grand Jury?

A No, I don't recall any such admonition in the transcript. I wasn't there when Jones came in.

Q So insofar as you know, Mr. Jones was free to say anything to anybody about his appearance before the Grand Jury? Is that not correct?

A Anything takes in a lot of territory.

Q Well --

THE COURT: I am familiar with the criminal and civil rules, and they don't place any limitation on a witness.

THE WITNESS: That is correct.

BY MR. MORGAN:

Q Mr. Moore, what I really would like for you to give us the benefit of your best knowledge on is this: The monitoring of a private individual's conversations is a relatively rare thing, is it not? On a most important matter? Insofar as Department policy is concerned?

A Your question is very vague.

Q All right. I withdraw the question and I will ask this --

A But I was going to go on.

Q All right, go ahead.

A It is relatively rare, yes.

THE COURT: You are talking about as of this time.

THE WITNESS: A. of this time and as of all prior times with which I am acquainted.

THE COURT: I was wondering whether he had procedures when he was there in February of '65 we are talking about, I guess.

Were there procedures as to who had to approve

this kind of monitoring? You couldn't do it on your own, could you? Or could you?

THE WITNESS: Well, we could have done it, but we might have been awfully darned sorry about it. We weren't about to do it.

THE COURT: Stick with me. I am not talking about your physical capability. Within the Department, working as an attorney for the Department, was it your right to determine on your own whether or not you would monitor the conversation of a citizen?

THE WITNESS: No, I don't think so at all.

THE COURT: You had to get approval from someone?

THE WITNESS: That is correct.

THE COURT: Who did you have to get approval from?

THE WITNESS: From our immediate superiors, Howard Willens, the First Assistant -- Actually Herbert J. Miller, Jr., the Assistant Attorney General in charge of the Criminal Division.

THE COURT: Could he give that approval, without going to the Attorney General?

THE WITNESS: That I don't know. But he went to the Attorney General in this instance.

BY MR. MORGAN:

Q We have established that this is not an ordinary situation -- is that right -- that you would monitor a private citizen's conversations? Can we agree on that?

A That is a fair statement.

Q What was there unusual suggested to you by Mr. Sandground that would warrant monitoring?

A Well, we had not reached a conclusion that monitoring was warranted as of the time you are speaking of. I assume the time you are speaking of is Tuesday morning, or Tuesday afternoon. That is why we were stalling, because we were indecisive about it.

Q And I gather that Mr. Sandground -- I have asked this question, but I don't think I have had an answer. Why did Mr. Sandground say he wanted Jones monitored?

A I am giving you my best recollection which is that Bittman in words communicated to me the idea that Sandground felt that Jones was initiating an effort to get Bromley to tell a false story if, as, and when Bromley went before the Grand Jury, to wit, a story which corresponded with the story that Jones had already told the Grand Jury.

Q Is this based on the Kaufman matter or is it based on something else?

A What Sandground bases his opinions on, I can only infer. I am not trying to fence with you, Mr. Morgan.

THE COURT: I don't think you are. I think you are probably the wrong witness on this point.

MR. MORGAN: That is true. I realize you are relating what you were told by Bittman and it is obvious we need Mr. Bittman.

THE WITNESS: I can give you my opinions.

BY MR. MORGAN:

Q Why did you have to stall Mr. Sandground?

A Because we hadn't made our minds up.

Q I know. But was this a matter of that great magnitude that you would normally resort to eavesdropping and monitoring private conversations?

A Any time we think that an effort is going on to tamper with a witness under subpoena and teach him a false story to tell a Grand Jury, yes, I think it becomes an extremely important matter.

Q When did that happen? When did you have such evidence?

A Such evidence as what?

Q That somebody was trying to tamper with your

tamper with your subpoenaed witness?

Q Well, I think we had it not later than midnight on Friday night.

Q Midnight on Friday night. You get me on your nights. Is this the night that you monitored --

A Friday night, March 26, 1965.

Q Is that the night you monitored Mr. Jones' conversation?

A It was the night of the Los Angeles meeting.

Q We are long before --

A You asked me when we thought we had the evidence that would prove such a thing and that is when it was.

Q Don't argue with me, Mr. Moore.

A Excuse me. I didn't mean to argue with you, sir.

Q I asked you what had happened that even required your stalling in terms of monitoring Mr. Jones? Why was there any hesitancy in saying, "Mr. Sandground, why we can't do that sort of a thing in a situation of this kind?" Why did you have to stall?

A We stalled because we hadn't made our minds up and we hadn't made our minds up because we thought this was a very serious matter. We didn't want to do anything precipitate. We didn't see that there was any pressing time

necessity at that time.

We wanted to discuss it in detail among ourselves and with our superiors.

Q At that time you only knew what Bittman had told you about Dee Kaufman? Is that correct?

A Sure, in the context of the other things you knew about Jones' Grand Jury testimony and Bromley's testimony as to what actually had occurred.

Q Just a moment. You knew what Bromley's testimony was before the Grand Jury?

A That is right.

Q And you knew Mr. Jones' testimony before the Grand Jury?

A That is right.

Q Was there anything in Mr. Jones' testimony that inclined you to believe that he was going to tamper with Mr. Bromley's testimony?

A Not in his testimony, no.

Q All right.

A The only thing I thought about his testimony was that it was false in the important particulars.

Q Very well.

A That is step one, trying to figure out whether a



man is going to try to get another witness to say the same thing, to change his story. There would be no point in trying to communicate any such thing to the other witness, it seems to me, you know, if you told the absolute truth in the first place.

THE COURT: I think, Mr. Moore, the point that Mr. Morgan is searching for is also a point that is in the Court's mind. Why not just go out and monitor -- which is the polite word -- these conversations to see what would turn up?

Why would there be any question about it?

THE WITNESS: It is not a simple thing to set up. It is not something that is done every day. We had never done it before. I had never done it before, although I have been in many discussions, theoretical and otherwise, about this as an investigative technique prior to this time.

THE COURT: Your reasons, then, were mechanical and not legal?

THE WITNESS: They were mechanical and legal. One of the things we did was that we went to the library and we dug out the Supreme Court cases, because when we sent those memoranda to the FBI they included in them a statement of our legal conclusions as to the propriety in

terms of Department of Justice policy and the legality in terms of constructions of the Fourth and Sixth Amendments.

THE COURT: That is what I am getting at.

THE WITNESS: This is one of the things that we wanted to consider and we did consider it. And we got into the library and we read the books. We read Lopez and we read Messiah.

THE COURT: So one of the reasons you stalled, you wanted to be sure whether you ought to do it?

THE WITNESS: That is right.

THE COURT: Both mechanically and in terms of its legal implications?

THE WITNESS: That is right.

THE COURT: You have a very important investigation going and you didn't want to do something inadvertently that would jeopardize what you were doing. Is that a fair statement?

THE WITNESS: That is a very correct statement.

BY MR. MORGAN:

Q Why would it jeopardize your investigation?

A If we violated the Constitution, A, we might infect a good case with tainted evidence.

And, B, when you do something that violates the

Constitution, ordinarily you are not doing much of a service to your superiors or anybody else, or to the tradition of the Department of Justice.

THE COURT: Right.

THE WITNESS: Believe it or not, we took that seriously.

BY MR. MORGAN:

Q You did monitor the conversations, didn't you?

THE COURT: After further information. We are talking about March 22, as I understand it. The reasons you were stalling on March 22?

THE WITNESS: Yes, sir.

THE COURT: There was no wire tap then?

THE WITNESS: That is correct.

MR. MORGAN: Does Your Honor normally have a recess in the afternoon?

THE COURT: Certainly. Would you want it now?

MR. MORGAN: Yes, I would like a smoke.

THE COURT: I get in bad habits when I don't have a jury. Excuse me. Ten minutes.

(Short recess.)

IW fls

Watson  
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MR. MORGAN: May I continue, Your Honor?

THE COURT: Yes.

BY MR. MORGAN:

Q | Mr. Moore, does the grand jury transcript with respect to Bromley's appearance in February indicate that at the conclusion of his testimony he was to be deemed still under subpoena?

A Yes, it does.

Q And did he appear subsequently?

A Yes, sir.

Q When was that?

A I believe it was June 2 and 3, 1965. I am sure it was early June.

Q | Now let's come to the events of March 22, 1965.

I believe you have testified that the first personal knowledge that you had with respect to a call received by Bromley from Mr. Jones was as you were preparing to retire on the evening of March 22, is that correct?

A That is correct.

Q | And that contact with you was by Mr. Bittman, who also lived in the same apartment that you lived?

A At that time, that is right.

Q So you have no personal knowledge of any of the events or circumstances attending Mr. Bittman's calling upon you that evening, is that correct?

A No, except subsequently --

Q As told you by Mr. Bittman, is that correct?

A Subsequently I talked to Bromley and Sandground about it.

Q I am trying to get things in date perspective.

A Yes, sir.

Q You were preparing to retire, you were contacted by Mr. Bittman and asked to join him in going over to Mr. Bromley's home. He naturally related to you the circumstances.

The point I make is --

A Yes, but he did not do that at that time. He said: Maybe I had better come over and let's talk about what to do.

Q Well, let me get the one thing out of the picture.

A Excuse me.

Q Prior to the time that Mr. Bittman contacted you --

A Yes, sir.

Q -- you had no personal knowledge of any events of that day bearing upon this matter, is that correct?

A I think what you are driving at is that I didn't know that Jones had called Bromley that night, and that is correct.

Q All right, I will accept that.

Now, Mr. Bittman alerted you and he came down and you got dressed. What did you then do?

A We sat in my living room and we talked about it.

Q Now, you talked about it. Let's stop right there. You talked about what?

A Bittman told me about his call from Sandground and what Sandground had said; and we discussed whether or not --

Q Let me stop there.

Mr. Sandground had told Bittman what Bromley had told him, is that correct?

THE COURT: That is right.

THE WITNESS: I assume, yes. At least that is what Bittman said that Sandground said. Bittman said what Sandground said what Bromley said that Jones had said to Bromley on the telephone.

BY MR. MORGAN:

Q Right.

A Now, what anybody actually said, other than what was said to me, I don't know.

Q Fine. That is fair enough. What then happened?

A First we discussed could we get hold of the Bureau, the FBI at this time of night, and get an agent; and we decided that would take too long and we probably couldn't even get it done; it would be too complicated.

Q What time was that again?

A I don't recall the exact hour but I would -- I am sure that it was subsequent to 8:00 p.m. My guess is it was probably subsequent to 9:00 p.m.. Almost certainly it was subsequent to 9:00 p.m. My best guess at this time would be between 9:00 and 9:30 p.m.

Q All right. Then what happened?

A We decided -- I said: Well, I think we can get a court reporter.

He said: How are you going to get a court reporter this time of night?

I said: I know a court reporting firm. Some of their people testified as witnesses for us or were called as witnesses for us in the Hoffa case up in Chicago. The Alderson Reporting Company.

And I got out the phone book and looked in the yellow pages and came up with a night number for that company, or else when we called their number, there was an answering service which



gave us the night number. In any event --

Q Let's stop here.

Had you done anything other than discussing it with Mr. Bittman prior to checking out the availability of the Alderson Service?

A No, we had not. I wasn't about to bother my superiors with a proposition if I didn't even know that we could handle the thing mechanically.

Q I see. All right, go ahead.

A I believe that we got in touch on the telephone either with Miss Horning or with possibly one of the other people in the Alderson Reporting Service. Anyhow, we made some phone calls and we ascertained that there would be a court reporter available whom we could pick up and who would go with us.

Q You were in no big hurry, were you?

A Sure we were in a hurry.

Q Why?

A Because we wanted to record that telephone call that night and time was passing.

Q Bromley was going to call Jones, not Jones Bromley.

A That is right.

Q What was the hurry?

A Well, it didn't seem to make much sense to have

Bromley calling at three or four o'clock in the morning when Jones was sleeping.

THE COURT: Well, the problem there is one that the Court had. Why did it have to be done that night?

THE WITNESS: I believe that Bromley had told Jones that he couldn't talk to Jones at the time that Jones called him because he had guests, or something like that, and had told Jones that he would call him back when the guests departed.

THE COURT: Bromley had scheduled to call back, as best you recall it?

THE WITNESS: I am not a hundred per cent certain about that, Your Honor, but that is --

THE COURT: That is your best recollection.

THE WITNESS: -- my best recollection. And there is some confirmation of that in the text of the court reporter's phone conversation.

THE COURT: Yes.

BY MR. MORGAN:

Q Did you give any consideration at all, Mr. Moore, to getting a magistrate to pass upon what you proposed to do?

A No.

Q I want to ask this again very definitely. At the time you and Mr. Bittman were considering this, and when to do

it, did he say to you that Mr. Bromley had set it up to call Jones back that night?

A As I told the Judge, I don't recall his exact words. I have an impression -- my best recollection is that I had it in my mind that Bromley had told Jones that he was going to call back. Now where I got that in my mind or the exact particulars, I just honestly don't recall, and I am not going to sit here and tell you that I do recall it.

I know that I felt and Bittman felt that the time for this to happen was tonight. And we went ahead on that basis. And it seems to me -- I am sorry if I am hazy and less than emphatic and categorical about this, but I am doing the best I can. It seems to me that we believed that Bromley was scheduled to call Jones back later that night after his "guests" departed.

Q All right. Now, after you determined the availability of the Alderson --

A And actually, I can elaborate on that a little bit if you want me to, because as I talk, another thing comes to mind.

Q Well, let's have it.

A The first thing that I asked Bittman on the phone was: What did Bromley say when Jones started up with this

account that: You know, Wayne, that the money was for you for services that you were to perform.

What did Bromley say: Did he admit it? Did he deny it? Did he say nothing?

And Bill said: I don't know for sure. I got the impression that Bromley just sort of said as little as possible and tried to stay vague, because Bromley thought that Jones might well have been recording the conversation when Jones called Bromley, and that Jones was trying to make a record that Bromley agreed with this version of the facts which Jones was putting out, namely, that this was a deal between Bromley, Jones and First Western, and that Baker had nothing to do with it.

That was also a concern and lent a feeling of urgency, at least to me, that, you know, I wanted to know exactly what Jones was saying and I wanted a record of it.

Q Well, of course, if Jones had recorded the conversation, that would not have necessitated a speedy call back to him. It could have been done any time, couldn't it?

A Well, maybe in your estimation it wouldn't have, but in my estimation -- we wanted to pin down just who was saying what to whom, and we were concerned when an important witness

was called up by a man that he had identified in his testimony, and that man starts saying: Now, Wayne, you know it was just you and me, and there wasn't anybody else, and so forth.

Q When you relate it in those terms, you are now talking about what Bittman told you Sandground said Bromley told him, isn't that right?

A That is right. And even more so, I am talking substance and I am talking in terms of the mental impressions that I had. Maybe Bittman didn't even put all of that in so many words, but this is where I was coming out. This is how I was evaluating the situation at that time.

So that there is a subjective element in the assertions that I am making about this at this time.

THE COURT: Did you know in connection with that conversation that Bromley was going to lie to Mr. Jones during the course of the conversation?

THE WITNESS: You mean when he called him back?

THE COURT: Yes.

THE WITNESS: I don't know if I thought specifically, but if I did think about it, I wasn't surprised when it happened.

THE COURT: So you had rather expected that when Mr. Bromley called back that he would, in the course of the

conversation lie in order to encourage Mr. Jones to talk to him, is that right?

THE WITNESS: No, I don't think that is a fair statement, Your Honor.

THE COURT: I want to understand it. Because he did lie in the conversation.

THE WITNESS: He said he hadn't been before the grand jury yet, as I recall.

THE COURT: That is one example.

THE WITNESS: The answer to that is this, Your Honor: That I wasn't thinking in any clear-cut way of exactly what Bromley was going to say and I didn't expect him to say anything in particular.

I also recall that when the court reporter read from her notes, after that conversation, a feeling of some slight distress, not surprise but distress that Bromley had volunteered that. I didn't think it was necessary and I thought it was unfortunate. But we were trying to make arrangements and get clearances --

THE COURT: None of this that I am addressing to you is personally critical.

THE WITNESS: Oh, no, I understand it, Your Honor. I am not embarrassed about it.

THE COURT: I am simply trying to understand to what extent the conversation on Bromley's end was set up by you before the conversation occurred. That is the point.

THE WITNESS: Not very much. I think one of the things we did tell Bromley was: You know, don't try and lead this guy when you are talking to him. Don't say: This is the way it was and that is the way it was, to elicit, yes, or, no, answers.

THE COURT: Where he says to Mr. Jones, "I haven't been before the grand jury," this is false.

THE WITNESS: Yes, sir.

THE COURT: "...and I am wondering what I am to say if I am called," I wondered if that had been set up by you.

THE WITNESS: No, sir, not that I recall.

BY MR. MORGAN:

Q Well, you were in the kitchen holding the receiver for the reporter. It was Mr. Bittman and another gentleman who were with Mr. Bromley, isn't that correct?

A That is correct, but all of us had been together prior to that time discussing what was going to happen.

MR. MORGAN: Had you concluded, Your Honor?

THE COURT: Yes, I had. Excuse the interruption.

MR. MORGAN: I want to develop a few things before



we get to this.

BY MR. MORGAN:

Q Then you or Mr. Bittman called someone to get authority?

A Howard Willens.

Q Howard Willens was what now?

A First Assistant, Criminal Division, Department of Justice.

Q And Willens said what?

A Willens said: I will call you back. To the best of my recollection.

Q All right. And how long before he did call you back?

A A very short period of time.

Q Ten minutes?

A Not more than twenty.

Q And he told you to go ahead, is that correct?

A Yes, sir. I believe he told us he talked with Jack Miller, but I am not certain about that at this time.

THE COURT: He said, "We concur." That is what he said when he called back. Asked his permission, he said he would get right back to them, he got back to them, said it was O. K., we concur.

THE WITNESS: That's right. We didn't call him up and say: What do you think we ought to do? Bill and I didn't operate that way. We called him up and said what we thought the Department should do, and this was our recommendation. We always made ourselves very clear as to our position.

BY MR. MORGAN:

Q So he said, O. K., is that right? He said: All right?

A In substance, yes.

Q O. K.

A That they considered it, it was O. K., go ahead.

Q You understand that Mr. Willens had checked with Mr. Miller and Mr. Miller was the Assistant Attorney General in charge of the Criminal Division?

A One of two things: Either he reached Miller and Miller concurred, or he had been unable to reach Miller and he went ahead. I have a lingering recollection, you know, that it might have even gone higher than that. I am half speculating and again, you know, we are dealing in fourth-hand hearsay at this point.

Q I suppose in a matter of this importance some memoranda would have been made on this point, would there not?

A As to who Willens cleared with?

Q As to the approval for what was done.

A Well, there was a memorandum and the memorandum says we called Willens and Willens okayed it, which is what we knew.

Q But beyond that, you don't know anything?

A That's right. Now this was prior to a larger memorandum summarizing everything that had happened and a lot more besides.

Q So then you did what?

A Then we called the court reporter back and said: We are going ahead. Get ready. How do we get to your house? And we got the instructions. As I recall it, the house or the apartment was over in Georgetown.

And we also got on the phone and made arrangements to meet Mark Sandground. I don't remember whether Mark came to my apartment and we all left from there or whether we met at an intersection on the way; but in any event, we all wound up in automobiles, picked up the court reporter, drove out to Bromley's house, arrived there about 11:45 p.m.

Q And Mr. Bromley, of course, received you?

A Yes, sir.

Q Now, at that time, at Mr. Bromley's home were you,

Bittman, Sandground, the reporter and Bromley, is that correct?

A That's correct.

Q Anyone else there?

A His wife and children, I believe, were upstairs asleep.

Q And what was the first thing done?

A We sat down in a sort of a den, and we asked Bromley to recount what had happened, his conversation with Jones earlier that evening.

Q And did you tell Bromley what he should then do?

A No.

Q Who told Bromley to make the call?

A I don't know that anybody told Bromley to make the call.

Q Well --

A We discussed making the call.

Q All right. You were sitting there discussing the making of the call. Did he just peremptorily get up and make it?

A No.

Q Or did someone suggest that he make it?

A No, I think we discussed it. We said: Well, this

is one thing that can be done and we think you ought to do it. What do you say, Mark?

And Sandground said: Well, under the circumstances, I think he ought to do it. Wayne, it is up to you but I think you ought to do it.

And Bromley said: All right, I will do it.

And Sandground sat down and wrote out a consent in his own handwriting, as I recall, and Bromley signed it, and Sandground signed it as a witness.

Q This consent was executed after you were all there with the reporter, is that correct?

A That's correct.

Q All right. Now, was there any discussion about what Bromley should say in this call to Mr. Jones?

A I recall one thing and that was that he said: Well, I am going to tell him I had company and couldn't talk before.

Q You wouldn't know whether that was a lie or not, too, would you?

A My impression is that that is not a truthful statement, that he did not have company previously.

Q Right.

A And I believe my impression is based on what Bromley told me.

Q All right. Now again to my question: Did you, Mr. Bittman or Mr. Sandground -- or anyone else in that room other than Bromley -- tell Bromley what to say to Mr. Jones?

A As I recall, what we said was: Don't lead him. Don't put words in his mouth.

Q What kind of words?

A Any kind of words about the transaction. Don't tell him the transaction was this way or that way and, you know, try to induce him to acquiesce in what you are saying.

Q What did you tell him?

A Don't say anything inconsistent with the truth when you are talking to him.

Q He let you down on that one, didn't he?

A Well, I guess he did.

Q All right. Now again --

A I think we were thinking in terms of, don't say anything inconsistent with the truth of the First Western Financial Corporation transaction, when we said that to him.

Q Mr. Moore, are you testifying that this call was set up back to Mr. Jones and you were there to monitor it, and no one suggested to Mr. Bromley anything as to what was to be said?

A No, I am not really suggesting that. To the best of

recollection we said: Just call him up, resume the conversation that you were having before. He wants to talk about the deal between you and him and Baker, and we want to listen to him talking about that.

Now, again, I am giving you substance. Nobody said that in those words, but this in substance is the message we were trying to impart and did impart. We wanted to know about why First Western Financial Corporation was sending those checks to Bromley and, you know, what position was Jones taking on that, and was Jones going to tell him to lie or not.

Q Well, Mr. Jones --

A We were interested in that transaction and we weren't bashful about expressing the fact that we were interested.

THE COURT: You had already made up your mind why the checks had been sent, hadn't you? You don't mean to imply to the Court that you were still at this stage investigating? You had accepted Bromley's version, had you not?

THE WITNESS: Tentatively, Your Honor.

THE COURT: Firstly, tentatively, but you had a lot of talks with him.

THE WITNESS: Oh, yes, and we felt that we believed



him.

THE COURT: You felt he was telling you the truth.

THE WITNESS: Yes, sir.

THE COURT: So your real interest was, was it not, to see if you could catch Mr. Jones in attempting to influence Bromley's testimony or in a statement that would set him up for a perjury indictment?

THE WITNESS: That was one of the things that was in our minds, Your Honor, but it was not the only thing that was in our minds.

THE COURT: I accept that.

THE WITNESS: I would like to be very clear about this.

THE COURT: Those were two of the things that were in your mind.

THE WITNESS: Yes, sir, I think so.

THE COURT: That possibly you could set him up for a perjury indictment.

THE WITNESS: Set him up, I don't think is a fair --

THE COURT: What I mean is obtain corroborating evidence that he perjured himself.

THE WITNESS: That was one of the things that was in our minds. I don't think we were setting him up.

THE COURT: I should not have used that phrase, though I think you were.

THE WITNESS: Well --

BY MR. MORGAN:

Q Is it fair to say that Mr. Jones was the focus of your investigation at that point?

A Well, he was one of the foci.

Q He was certainly a target of inquiry, I would say, was he not?

A Yes.

Q You were seeking to make a case against him, weren't you?

A We were prepared to give him the opportunity to -- Well, strike that. I don't want to engage in a lot of euphemisms here, and I also want to be accurate.

We at that time believed, we were ninety per cent sure, I would say, or eighty per cent sure -- it is a little unrealistic to talk about this in terms of percentages -- we were practically almost convinced that Bromley was telling us the truth about this because everything pointed in that direction and we were unable to break down his story, although we had tried.

Q What you are saying to me now --

A Convinced, therefore, to that extent, pro tanto, we believed that Jones lied to the grand jury and we were there to record a conversation between Bromley and Jones about the subject matter of Jones' grand jury testimony.

Q What you are telling me, Mr. Moore, then confirms even more fully that Mr. Jones was the target of your investigation, and you were there seeking to get evidence against him.

MR. LYNCH: Your Honor, I object.

BY MR. MORGAN:

Q Is that not correct?

MR. LYNCH: This is really argument.

MR. MORGAN: There may be an element of argument in it.

THE COURT: I will permit it.

THE WITNESS: We were there seeking to find out what was going to happen. We didn't put any words in Mr. Bromley's mouth. We were very interested in finding out whether this man was going to in any way attempt to corruptly influence the testimony of Mr. Bromley, and we were very interested in finding out whether he committed perjury the week before when he was before the grand jury.

Now, if you want to use loaded words like target, which conjure up a picture of the cross hairs focusing on the back of somebody's head, O. K., but I am not going to acquiesce in that use of invidious terminology. At least it sounds invidious to me.

THE COURT: The Court isn't interested in the adjectives, and I think you have been very frank in what you naturally felt were your responsibilities and why you were proceeding the way you were.

You have also said that Mr. Jones otherwise was not a subject of the investigation in any immediate sense of the general Baker investigation.

So that if you put those two things together, the Court takes this to be an indication that from what Bromley had told you, which you had corroborated, and from what you had heard secondhand as to the nature of his call earlier from Jones that was not recorded, you felt there would be an indication that would either confirm your strong suspicion that Mr. Jones had lied before the grand jury or that he was trying to influence someone that you considered under subpoena and still a witness.

THE WITNESS: That is correct, Your Honor.

BY MR. MORGAN:

Q Alluding to something you said, Mr. Moore, I am not interested in words you might have put in Mr. Jones' mouth. I am interested in the words you and Mr. Bittman may have put in Bromley's mouth.

A I to understand your testimony here today is that you did not tell Bromley what to say in that conversation?

A No, we didn't write him a script or anything like that. As a matter of fact, I was very interested -- I recall this, when --

Q Can't you answer that, yes, or, no, sir?

A Well, you had better repeat it. I don't think I can or I probably would have. But ask it again and I will try.

THE COURT: He did in one sense put words in his mouth. In the sense of saying: Don't lead him and don't misrepresent about the transaction, as you understand the transaction to be.

In that sense he was putting words in his mouth, Mr. Morgan. But he did not, as I understand his testimony, write a script for this telephone conversation in advance. If you mean put words in his mouth in that sense, the answer is, no, I understand.

THE WITNESS: That is correct, Your Honor. And as a matter of fact, now that we are talking about it, again this is my best recollection, I am not a hundred per cent sure, but what flows to the surface of my mind as we discuss it is a statement by somebody that: Look, you know you are pretty much going to have to play this by ear. You know, just go along with whatever develops because we don't know what is going to be said.

THE COURT: Surely.

BY MR. MORGAN:

Q Now, you were in the kitchen with the reporter holding the receiver to her ear?

A That is correct.

Q And Mr. Bittman and Mr. Sandground were sitting with Mr. Bromley in his living room, is that correct, or study?

A I assume. They were out of my sight but that is where they went, and the rest of it is irresistible inference, it seems to me.

Q What period of time may have transpired between your going into the kitchen with the reporter and the initiation of the actual call?

A Very short term.

Q How long?

A Two minutes, one minute.

Q What may have transpired in Mr. Bromley's study before he made that call then between Mr. Bittman and Mr. Sandground you would not know about, would you?

A I don't know about what transpired between them when they were out of my sight and hearing, no, except to the extent that anybody told me that something transpired, and nobody did.

Q The answer is, no, right?

THE COURT: That is what he said.

MR. MORGAN: Fine all right.

BY MR. MORGAN:

Q So was there any way that Mr. Bittman and/or Mr. Sandground could listen to this conversation?

A Yes, there is a way. Whether they did or not, I don't know.

Q Was it set up so they could?

A All Mr. Bittman had to do -- and I have a vague recollection that he did do this, and knowing Bill as well as I do, I have a feeling that he did it, even if he hadn't told me -- he could easily have stood by while Bromley was talking, and if Bromley held the receiver a little ways from his ear --



THE COURT: But you don't know whether he did that or not?

THE WITNESS: No, I don't.

BY MR. MORGAN:

Q He didn't tell you that he did that?

A I don't recall.

Q You don't recall whether he did or didn't tell you?

A No, I don't.

THE COURT: In any event, you had it read back to you right afterwards and you were all together and you heard what it was.

THE WITNESS: That is correct.

MR. MORGAN: What is the number of this exhibit?

THE COURT: No. 2 is the conversation.

MR. LYNCH: Do you want this?

BY MR. MORGAN:

Q For convenient reference as we go along, Mr. Moore, I would hand you what is marked for identification as Government Motion Exhibit No. 2, which purports to be the text of the conversation initiated by Wayne Bromley with Clifford Jones at the home of Bromley, at approximately 12:15 a.m., Eastern Standard Time, Tuesday, March 23, 1965.

Now, again, I would like for you to tell me when

you first saw this document?

A I don't know exactly. It might have been Tuesday afternoon. It might have been Wednesday. It might even have been as late as Thursday, but I seriously doubt it.

Q Well, sometime between 12:15 a.m. Tuesday, March 23, and Thursday, at least, you saw this, is this correct?

A Yes.

THE COURT: Excuse me, Mr. Morgan, while we change reporters.

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(Following Change in Court Reporters)

BY MR. MORGAN:

Q Mr. Moore, I believe you testified -- and correct me if I am wrong -- that when the telephone conversation was concluded the reporter thereupon read back her notes as she had taken them during the course of the conversation; is that correct?

A Yes, that is my recollection.

Q As you heard those notes read back to you that night, did you feel that it had confirmed what Mr. Bromley had said?

A Well, yes.

THE COURT: Is that relevant to the motion to suppress?

MR. MORGAN: It is in this sense, Your Honor: This further monitoring that occurred the next day or the day after the next day, I think it is germane to know why.

THE COURT: I see your point. If this had not led the prosecution to feel that Bromley had been telling the truth then the further monitoring would not have been justified, whether this was or wasn't?

MR. MORGAN: That is right.

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THE COURT: I see your position. You may pursue it then.

BY MR. MORGAN:

Q I would ask, Mr. Moore, that from this transcript which you have now read and which you have had read to you from the notes of the reporter, what there is therein that confirms Bromley's assertion that Jones was trying to get him to testify falsely?

MR. LYNCH: This couldn't be the foundation for the argument that Mr. Morgan has made why it is relevant, whether or not it confirms his belief. What was in there that would confirm that belief doesn't make any difference. It seems to me we are getting a question that Mr. Morgan should be arguing to the jury rather than with this particular witness.

THE COURT: Well, I take it that is one of the issues before the Court. Let's talk about this a minute, Mr. Lynch. One of the issues before the Court is sort of a vague issue as to whether there was just cause.

MR. LYNCH: Reasonable.

THE COURT: Or reasonable basis or whatever you want to call it. Now, if you assume -- which the Court is

saying for the purposes of discussion --

MR. LYNCH: Yes, sir.

THE COURT: If you assume that the information that came as to the alleged conversation that wasn't monitored suggested that Mr. Jones was going to acknowledge perjury in some form or attempt to persuade Bromley not to tell the truth. If you had a conversation, for example, that said, now, the first and only thing I want you to be sure you do, Wayne, is tell it exactly as it happened -- I realize that this isn't what this said here -- when you go before the Grand Jury, and I am going to tell what happened. And if our stories differ it doesn't make any difference. We have got to play it right down the way we remember it. Take that as an extreme.

MR. LYNCH: Surely.

THE COURT: There would be no justification for further monitoring of Mr. Jones' conversation.

MR. LYNCH: Yes.

THE COURT: Unless some other intervening act had came forward.

MR. LYNCH: You could take that position assuming you had to establish reasonableness in further monitoring. I

would take issue with that.

THE COURT: You would say that in view of the initial information given even if this particular piece of bate didn't catch any fish, so to speak? They were justified to continue monitoring?

MR. LYNCH: Yes, sir. And even if you take the position that once they had a confirmation that there was an attempt to get Bromley to commit perjury or to affirm the fact that Jones had committed perjury. Whether or not, in fact, that document sets forth that confirmation doesn't make any difference. It is Mr. Moore's state of mind at the time that he felt it was confirmatory.

THE COURT: I think, without getting into a debate with Mr. Moore, Mr. Morgan, I will permit you to ask him to point to those answers that, in some manner, he felt tended to confirm Mr. Bromley's prior statements to him.

And, Mr. Lynch, by so doing I am not concluding that if there was no confirmation your position may not have some merit in view of the earlier indications. But I don't think we ought to sort of psychoanalyze this document because we could be at it forever. I think that Mr. Moore can indicate those aspects of the document which

particularly sort of indicated to him he was on the right track, so to speak, in his suspicions.

THE WITNESS: The first thing that struck me --

MR. MORGAN: May I respond there, Your Honor --

THE COURT: Yes.

MR. MORGAN: -- To Mr. Lynch.

Mr. Moore, if Your Honor please, has indicated why this unusual procedure was initiated by the Government. He stated (1) that it was done because Mr. Jones was seeking to suborn perjury, I suppose, on the part of Mr. Bromley, or he was seeking to get evidence against Mr. Jones to make a perjury case against him. Now, my question to Mr. Moore was in that context. Now I will be content to let you respond to a question which the Court has indicated.

THE COURT: Obviously, the Court has to recognize, Mr. Morgan, that if this document were as pure as the driven snow we wouldn't be sitting here having a motion to suppress. Now, you may indicate what you think are the aspects of it that were particularly significant.

THE WITNESS: The first thing that struck me -- and the thing that made the biggest impression on me initially -- appears at page 16, lines 18 through 22 when



they are discussing the meeting at Jones' office in the Thunderbird. Jones says there was nobody else present but two of us, just the two of us. Bromley said, are you asking me or telling me? And Jones said, I am telling you. That made an impresson on me.

BY MR. MORGAN:

Q Why did you assume, Mr. Moore, that this relates to the meeting at the Thunderbird?

A Because that is what they were talking about immediately before where Jones said -- In other words, the first conversation was held there, referring to the Washington conversation, and you came out here and we rode around and went to my office and made a deal. They did go to his office and make a deal. It wasn't just the two of them. Bromley said, are you asking me or telling me? Jones said, I am telling you.

Q The point I make is this is your construction of this, as meeting in Las Vegas and not Washington?

A That is right. And he says, you came out here, after referring to the Washington conversation. Previously in context the way they are setting it up or the way the discussions ran, Jones said, but, oh, yes, don't you remember

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we talked in Washington before you talked in Las Vegas and I didn't tell him about the Las Vegas part.

The other thing I don't see immediately in the transcript.

Q May I interrupt you, Mr. Moore?

A Certainly.

Q Is there any indication why no mention was made of the Las Vegas meeting?

A Yes, that was the second thing that sort of interested me. Jones says, -- I can't seem to find it in the transcript here but I remember it. Jones said, well, I didn't mention it because I knew that was a delicate situation. And that struck me as indicating Jones had recalled that meeting when he was testifying and knew it was a delicate situation and decided not to mention it.

Now, I am not making a closing argument to a jury or anything and I am reluctant to be talking in these terms when a man hasn't been tried, but you are asking for my opinion and the only thing I can see to do is state it. I am a little embarrassed by stating it.

Q Now, I do want to ask you this question. Was Mr. Jones ever asked before the Grand Jury about a meeting in

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Las Vegas?

A I think he was asked about any meetings at all with Bromley and Baker anywhere.

THE COURT: Let's not get to arguing the merits of the case.

MR. MORGAN: All right, Your Honor. I submit that is not correct, but we will go on.

THE WITNESS: There were some other matters.

THE COURT: I think this is sufficient. This is sufficient for the Court's purposes anyhow with respect to the continued existence of a suspicion.

BY MR. MORGAN:

Q I would like to invite your attention to page 4 of this transcript. Perhaps you can be helpful in indicating what is meant. At line 20 Bromley says to Jones, I am getting ready to go to the well again and I thought all that had stopped a year before. As you have construed that, was Bromley referring to going to the Grand Jury again?

A I don't think so. Let me read the next page. I am trying to find out what it was he was talking about.

THE COURT: He was talking about going back before the Grand Jury, wasn't he?

THE WITNESS: I guess that is right.

THE COURT: Doesn't that indicate Mr. Jones knew he had been before the Grand Jury?

THE WITNESS: I just honestly don't know. That is the way it looks, but Bromley says in another place -- It is a very ambiguous statement and I don't know what it means. Excuse me, it is not ambiguous, it is vague.

THE COURT: Yes.

But it really is not significant to the Court what Mr. Moore thought all of this meant, Mr. Morgan.

MR. MORGAN: I beg your pardon, Your Honor?

THE COURT: It really isn't significant as to what he thought it meant.

MR. MORGAN: I appreciate that.

THE COURT: The only reason I let you pursue that is to see whether or not it contains some suspicious element. Which I imagine most conversations do to one who is required by his job to be suspiciously minded. But that is about where we are on that. Mr. Moore was trained to be suspicious. That was his job.

THE WITNESS: I think trial lawyers and, especially, the ones as good as Mr. Morgan are trained to be

suspicious too, especially if they start out with the FBI.

MR. MORGAN: Twenty or twenty-five years ago I was suspicious too, Mr. Moore.

THE COURT: Let's move on to the motion to suppress.

BY MR. MORGAN:

Q Leaving Mr. Bromley's home after a session there, there came another time at which you and your associates made a decision to eavesdrop on a conversation between Mr. Bromley and Mr. Jones. Now, I want to be sure I understand how that came about. Will you state for the record exactly how that occurred?

A All right, I will do the best I can. Let me just throw in at this point that Bromley-Jones telephone conversations was not all or even half of what we were doing that week. I don't recall if the Grand Jury was in session, but we had, you know, a dozen different areas we were working on. I don't want to give you the impression all we did was sit around with Jones.

THE COURT: I understand.

THE WITNESS: What else we were doing on Tuesday I am not sure of. Maybe my diary for that day would cast some light. I just don't know. But what I

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do know is that on Wednesday morning I was informed by Bittman that he had been informed -- I suppose by Sandground -- that Bromley had told Sandground that Jones had told Bromley at about 11:30 the night before -- that is Tuesday night -- that there was a conversation in which, in substance, Jones had said, look, why don't you go ahead and get in touch with Baker and let's all meet in either Las Vegas or Los Angeles, someplace out on the West Coast. Again, I emphasize this is hearsay what I am telling you now. I am not attempting to tell you what, actually, was said by Jones to Bromley, but this was the message that I got. And on that basis Bittman may very well have called back to Sandground or to Bromley for that matter to double-check what was said. I don't know.

Anyhow, it was on the basis of that information, it seems to me, that we decided, well, all right, if Jones wants him to make these phone calls and set up this meeting then let's monitor the phone calls; and let's get going on a memorandum to the FBI which recounts the facts as we know them and get it up to Miller and see if Miller will send it over to Director Hoover. And we prepared the memorandum and went up to the front office. We might very well have talked to Jack Miller before we prepared the memorandum. I

12 don't know in what sequence we did it. But, in any event, Miller okayed the request and the document was walked over to the Bureau.

The Bureau approved it and on the afternoon of the 24th, which was Wednesday afternoon, Larry Condatore, Bittman, Sandground, Bronley and myself met at Sandground's office and the first call which were recorded by the FBI were then made.

BY MR. MORGAN:

Q Just for my information, where was Mr. Sandground's office located at that time?

A I do not recall the location of the office. I recall the interior decorations but the location of the office I haven't the foggiest idea except there was a Peoples Drug Store downstairs. I remember that.

Q All of you gentlemen assembled in Mr. Sandground's office and the FBI Agent then proceeded to set up the phones so that it could be monitored; is that correct?

A That is correct.

Q Specifically, what did the Agent do to the phone?

A The best I can recall is I believe he put a suction cup on one part of the phone, the long part between



the earpiece and the mouthpiece.

Q An induction coil?

A Technically, I am out of it. I wouldn't know an induction coil if it hit me in the eye. He also, as I recall -- I am a little vague about this. It seems to me that he may have unscrewed either the earpiece or the mouthpiece and put something in there and then screwed it back on again; or else he put something around the earpiece or the mouthpiece.

But my recollection is very vague. Condatore, I saw him in the witness room, and I am sure -- Well, excuse me, it is not for me to say.

Q Well, in any event, on this particular call it was set so Bromley could talk into the telephone and it could be recorded off that phone?

A That is correct.

Q It was not on an extension phone?

A No.

Q I see. Now, Bromley sets out in an attempt to locate Jones, is that correct, or Baker?

A I think he was trying to call Baker first.

Q And over what period of time did you remain there while he was trying to reach Baker?

A I don't know. I think he put in two or three phone calls to Baker. I recall one to Serv-U Corporation, one to the Beverley Rodeo -- Maybe he called the Rodeo twice. I don't know. He may have called Jones to report his failure to reach Baker. I don't now remember if he talked to Jones.

THE COURT: That is all set out.

THE WITNESS: That is more in the report.

BY MR. MORGAN:

Q I am more interested in knowing how long a period of time elapsed anyway on this day. You didn't get him, either one of them?

A That is right. I know we didn't get Baker. Whether we got Jones or not; I don't think we did.

Q You retired for the day and returned in the morning?

A That is correct.

Q And the same cast of characters?

A Yes, sir.

Q And the same adaptor on the phone, is that right?

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A Yes, sir.

Q Did the agent have a recording machine with him?

A Yes, sir.

Q Did he also have a receiver?

A I don't know what you mean by that?

Q In addition to the recording machine per se, did he have a receiver so he could listen too?

A I believe so. I know he had earphones there. Whether they were used or not I don't know. I still don't remember.

Q And you ultimately then reached Mr. Jones, is that correct?

A First Baker and then Jones. The sequence is in the report, as is the text of the conversations, of course.

MR. MORGAN: I think, in order to complete the record -- Mr. Lynch indicates that this was not marked as an exhibit. Would you have that marked as a Government Exhibit?

MR. LYNCH: I will have it marked a Government Motion Exhibit, the next number.

THE DEPUTY CLERK: Government's Motion Exhibit No. 7.

THE COURT: No. 7?

THE DEPUTY CLERK: Yes, Your Honor, for Identification.

Will you describe it for the record?

MR. MORGAN: Government's Motion Exhibit No. 7 is a document that has on the front page on the stationery of the Federal Bureau of Investigation the date of March 26, 1965, and the initial language is: "Attached is transcript of telephone calls made by Wayne L. Bromley to Clifford Jones and Robert G. Baker, as recorded by Special Agents of the FBI."

(Government's Motion Exhibit No. 7  
was marked for Identification.)

BY MR. MORGAN:

Q Now, at the time the calls were initiated and prior thereto, had any one of you indicated to Mr. Bromley what he should say to Mr. Jones?

A No, I don't think so. First he reached Baker and then he reached Jones. And I don't think we were telling Bromley what to do or what to say at that point. Bromley was going about getting agreement as to the time and place of this meeting, and we didn't tell him how to go about

17 it. I think something may have been said, to the effect, look, you know, if Baker or Jones start talking about the underlying transaction, the Conduit Payment Arrangement or what happened in the Las Vegas Meeting, you know, don't cut him short. If they want to talk about it talk. But beyond that we just told him to use his own judgment.

THE COURT: Well, had you encouraged him to set up this meeting?

THE WITNESS: Encouraged Bromley to set up the meeting?

THE COURT: Yes.

THE WITNESS: We, certainly, hadn't discouraged him, Your Honor. We didn't push him into it.

THE COURT: Whose idea was it? Was it suggested in the first wire tap?

THE WITNESS: I think it was discussed in that conversation in vague terms. My impression is it got a little more specific, got a lot more specific when Jones called him on Tuesday night. There had been some talk in the court reporter conversation, to the effect, as I recall it, well, are you coming West anytime soon? Bromley said, well, no. And then, well, do you ever get up to New York?

THE COURT: Well, Bromley initiated the talk about a meeting at page 12.

THE WITNESS: Well, if he did, he did.

THE COURT: Did you put him up to that?

THE WITNESS: I do not recall doing any such thing, Your Honor. The extent that I have a recollection is to the contrary.

THE COURT: Yes.

THE WITNESS: In any event, my impression is the discussion was vague at the midnight conversation and then the Wednesday night conversation it got more specific

BY MR. MORGAN:

Q Who initiated what in that conversation?

A That is why I went all around Robinhood's barn to emphasize to you, Mr. Morgan, and I don't want to put words in anybody's mouth what Jones said when he called him Tuesday night. I am left with an impression that Jones had a fairly specific proposition for Bromley; namely, let's meet out on the West Coast Friday or Saturday. I wasn't in that conversation and my impression comes from many sources.

We were not discouraging the idea of a meeting

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and I don't think we were pushing for that meeting either.

I think we were trying to be very careful not to be dictating the course of events.

Q I might ask you this, of course, as I asked about the other conversations. Mr. Jones didn't know he was being monitored, did he?

A Well, again, as you pointed out before, I don't know what Mr. Jones knew. There was no indication that he knew and we, certainly, from our point of view, we didn't want him to know that he was being monitored; and we didn't do anything to assist him in finding out in any way.

Q You did nothing to alert him to the fact that his conversation was being monitored?

A No, sir. We did nothing to alert him because we didn't want to alert him.

Q You had a great deal of time, did you not, Mr. Moore, this time, at least, before you initiated these calls to have considered approaching a Magistrate with respect to getting authority to do this, didn't you?

A We had a great deal of time to consider anything we wanted to consider, including that, surely.

Q Did you consider that?



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A No. And a great deal of time is a relative term. We had whatever the time was, you know. You know the exact sequence and the time. So we had as many hours as there are between one thing and the next thing.

Q You were under no impelling need timewise to place the call at any particular time, were you, Mr. Moore?

A No, except that it had to be on Thursday because Jones had been talking to Bromley. Again, I was informed by means of, you know, remote hearsay. I suppose it could have gone over to Friday but the point is when you say you had a great deal of time to consider this, that or the other thing, that is such a vague phrase that I start splitting hairs with you.

THE COURT: Well, it is unimportant. You didn't consider going to a Magistrate and if you had considered you had time to do that if you had decided to do it. Isn't that right?

THE WITNESS: Yes, sir.

THE COURT: Whatever relevance it has --

THE WITNESS: We could have found a Commissioner or Judge somewhere in the District, I guess, if we had thought that was necessary or required by the law. If we had thought

so we would have done it.

THE COURT: The question now is whether you were right.

THE WITNESS: Yes, sir.

BY MR. MORGAN:

Q After these conversations between Bromley, first with Baker and then with Jones, and the meeting being set up in Los Angeles, when was the decision made and by whom to cover those conversations electronically?

A The decision that this should be done was made by my superiors in the Department of Justice; namely, Herbert J. Miller, Jr. and the Attorney General of the United States.

Q And so the record will preserve this for posterity, who was that?

A Nicholas de B. Katzenbach.

Q And Mr. Katzenbach approved the arrangements that you effected? Well, I am not sure this is a fair statement. Mr. Katzenbach approved, I would gather, your covering this meeting in Los Angeles; is that right?

A Yes, he did.

MR. LYNCH: Your Honor, I don't see that it is

terribly relevant to a question of law on whether or not this is suppressible or not suppressible.

THE COURT: You don't? You think there is no greater dignity to a wire tap approved by the Attorney General than one done on the spur of the moment by some employee?

MR. LYNCH: If by a wire tap you are in violation of Section 605.

THE COURT: It makes no difference. All right.

MR. LYNCH: It makes no difference.

THE WITNESS: In any event --

THE COURT: This might be a good time, gentlemen, to adjourn. We are about to get into the Los Angeles meeting.

Now, there are one or two things that I have on my mind that I would like to mention. I have permitted great liberality with this witness in order to sort of set the background and the sweep of events here. But, certainly, as we move on to other witnesses we are going to have to get more precisely into the suppression question and nothing else. There is a certain amount of background needed and I have been impressed with Mr. Moore's doing his level best to distinguish between hearsay and non-hearsay.

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I think when you finish your cross examination we will have the general background painted. I think with the other witnesses we should pinpoint to matters of real consequence and against the background of Mr. Moore's testimony.

I do want to know, Mr. Lynch, two or three things from you that might be helpful, if we could take a moment with them now.

Are there any written procedures that were then in effect in the Department of Justice governing the conditions under which monitoring and wiretapping were permitted to take place?

MR. LYNCH: Not that I am aware of, Your Honor. This wouldn't be considered wiretapping.

THE COURT: Whatever you want to call it..

MR. LYNCH: There were then no procedures in the Department of Justice regulating this type of investigative technique. To my knowledge, now there is no regulation covering the investigative technique involved in listening to a phone conversation with the consent of one of the parties.

THE COURT: The next thing I was interested in is

whether you propose to introduce into evidence the exhibits that you have identified. The Court has had a set of monitored conversations available but there were other exhibits which you marked that are not in evidence. If you intend to use them it may be helpful if the Court took a look at them overnight. I assumed you were going to put them in the record.

MR. LYNCH: I offer them, Your Honor. I thought I did make a formal offer.

THE COURT: You did not.

Well, I will receive them if there is no objection to those memoranda, Mr. Morgan, the ones that have been identified here in Court today. Those are the only ones I am talking about.

MR. MORGAN: Well, first, Mr. Moore is unable probably to identify them but upon the representation of Mr. Lynch that these are the recordings involved, I will interpose no objection.

MR. LYNCH: This is for the purpose of the hearing.

THE COURT: I am interested in the memoranda, the yellow memoranda, the ones Mr. Moore had something to do with.

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MR. LYNCH: I believe he identified them as all having been prepared by him, Your Honor.

THE COURT: Those I would like to receive in evidence then and examine them overnight.

THE DEPUTY CLERK: Are all those marked in evidence, Your Honor?

THE COURT: They will be marked in evidence.

Now, the third matter that I have on my mind, Mr. Lynch, is that I wish to know, fairly promptly, what the Department's position is as to the effect of the new statute that was passed by the Congress relating to, at least, related matters.

We have had, since these events took place, a statute passed which points in the direction of some concern on the part of Congress with respect to, at least, certain types of monitoring and certain standards which the Government must follow before that information is admissible.

I am anxious to know to what extent the Department feels that statute, which speaks prospectively, reads on the problems that we have here.

MR. LYNCH: I think, perhaps, Your Honor, you will want an oral report from me?

THE COURT: I know you are going to tell me

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it doesn't have any effect on them, but what I am interested in is having a more reasoned and less emotional response that perhaps will direct the Court to some authorities to help me decide whether you are right or wrong.

Obviously, if you thought it controlled we would have a somewhat more truncated hearing instead, and I am anxious to know how you think I should deal with that statute. It seemed to me best, after you have indicated your position in memorandum form, to give Mr. Morgan an opportunity to respond to it.

MR. LYNCH: Yes, sir.

THE COURT: I want to deal with that statute as part of the problems on this motion.

MR. LYNCH: We would avert to the statute. It would simply be a question of -- I thought the arrangements were going to be that we were going to get a transcript and then submit to you a memorandum setting forth our position.

THE COURT: I think that is what the arrangement was but I do want to indicate to you that this is a matter of some concern to the Court.

MR. LYNCH: We will whip up an independent



27 memorandum if you prefer to have it before the time.

THE COURT: I don't think that is necessary.

Whipped up memoranda are not as good.

MR. LYNCH: I keep sticking my foot in my mouth here, Your Honor.

THE COURT: But I will take up those exhibits and look at them overnight. The monitored conversations, I am not interested in that.

What time, gentlemen, tomorrow?

Mr. Moore has other matters on his mind, I am sure.

MR. LYNCH: Any time you like, Your Honor.

THE WITNESS: My firm represents the Federal Home Loan Bank Board in Chicago. We have got conferences set with members of the board tomorrow afternoon.

THE COURT: Let's start tomorrow, gentlemen, at 9:30. Mr. Morgan doesn't like to get up early, he tells me, but we will make an exception for tomorrow. If we start at 9:30 Mr. Moore should be free so he can fly back over the noon hour.

THE WITNESS: The conferences are down here in Washington, Your Honor.

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THE COURT: Then you will probably make them.

THE WITNESS: At 2:30.

THE COURT: I will cut it in the middle to quarter of 10:00 on Mr. Morgan's assurance you will be done at lunch time.

THE DEPUTY CLERK: For the purposes of the record, Exhibits 1 through 7 have been marked in evidence.

(Government's Motion Exhibits

No's. 1, 2, 3, 4, 5, 6 and 7

were received in evidence.)

THE DEPUTY MARSHAL: This Honorable Court stands adjourned until 9:45 Tuesday morning.

(Adjournment as noted at 4:45 p. m.)

Whereupon --

DONALD PAGE MOORE

resumed the stand and testified further as follows:

CROSS EXAMINATION (Cont'd)

BY MR. MORGAN:

Q Mr. Moore, at the time we concluded yesterday, I almost had you in California.

A Yes, sir.

Q And I will try to get you there very shortly with a couple of questions, or a few questions at least.

I would like to have your testimony a little more fully on the exact method by which these seven phone calls initiated by Bromley from Mr. Sandground's office were handled.

You have stated that arrangements were effected through the FBI for this monitoring, and there was an attachment put on the phone; that, in turn, was attached to a recorder.

I believe you recall that headsets were available.

Now, at the time of these recordings, will you state for this record who did what?

A Condatore attached the equipment to the telephone.

He attached the equipment to the tape recorder.

Bromley picked up the telephone, dialed, and spoke over the telephone to whoever responded after he dialed.

When Bromley was ready to start dialing, Condatore turned the tape recorder on and the tape spool started to revolve. When Bromley finished any particular call, Condatore stopped the tape recorder, or -- and this is the other possibility -- the tape recorder had a device built into it that caused the spool to revolve automatically as soon as voices or sounds were heard.

I don't know which way it was done. But Bromley did the dialing; Bromley did the talking; Condatore handled the equipment.

Q And who if anyone was listening on the headsets?

A I do not recall whether anyone was. Someone might have been. I don't recall.

Q What were you and Mr. Bittman doing at that time?

A One or the other of us might have been listening, but I don't recall whether we were. We were in the room.

Q If you had been listening, what would you have been doing?

A We would have been sitting there listening.

Q Well --

A Thinking about what we heard, I suppose.

Q Was this amplified in the office of Mr. Sandground?

A Not that I recall.

Q It would have been necessary, therefore, for one of you to go over to the headset being used by Mr. Bromley and listen in, is that right?

A That is what I think.

Q Well, did one or the other of you do that?

A I don't recall.

Q You don't remember that?

A That is correct.

THE COURT: I think he said on direct he didn't know whether the earphones were used or not.

Is that what you are talking about?

MR. MORGAN: I am talking now, Your Honor, about the phone in Mr. Bromley's hand.

THE COURT: Yes, I see.

MR. MORGAN: And Mr. Moore, as I understand it, says he does not remember whether they did or did not.

BY MR. MORGAN:

Q Did Mr. Sandground do anything in the course of

these monitorings?

A He might have been the person who listened on the earphones, if anyone did. I don't recall.

Q Now, these recordings were made on two separate days. And I assume that you and Mr. Bittman at this point were in the role of investigators, as well as attorneys, but whatever you may be characterized in that regard, what did you learn from these calls?

A We learned what was said and by whom.

Q Did you learn that a meeting was set up in Los Angeles among Mr. Browley and Mr. Jones and Mr. Baker?

A Yes.

Q Now, based upon this intelligence that you obtained from this conversation, what did you next do?

A We are now talking about the Thursday morning, when the last group of phone calls -- when the conversations were had with Jones and Baker which were, to use the polite term, monitored.

Q I, again, am having a little difficulty on dates. Thursday was what date?

A Thursday morning is 25 March.

Q Fine. 1965?

A That is correct.

Q Thank you.

A We went back to our office.

Q In the Justice Department?

A That is correct.

Q Who went back, you and Mr. Bittman?

A That is correct.

Q Did Mr. Sandground accompany you?

A I am sure that he did not.

Q Did Mr. Bromley accompany you?

A I am sure that he did not.

Q Very well.

A Bittman and I went back to the office, and one or the other of us, or perhaps it was Austin Mittler, who was one of the attorneys working for us, prepared a memorandum from Herbert J. Miller, Jr., Assistant Attorney General, to the Director of the FBI.

Whether we prepared the memorandum first and then went in to the Assistant Attorney General to discuss whether that memorandum should or should not be sent -- I doubt that that was the sequence. I suspect that what happened is



that we went to Jack Miller first and talked about it, and then came back to the office and prepared a memorandum or started working on a memorandum.

As I talk about it, this becomes clearer in my recollection. We didn't get the memo prepared until sometime on Thursday afternoon. How early or how late, I do not recall. We undoubtedly must have started working on it by noon. Perhaps we even took a half hour for lunch in there somewhere. I don't remember that. But the point was --

Q Porgive me, Mr. Moore.

I want to ask one question here.

A Yes, sir.

Q At that point, had Mr. Condatore, the FBI agent who handled the recording -- had he made available to you the transcripts of the recordings?

A No, he had not.

Q Do you recall when you received those?

A I think it was later, perhaps a day later, maybe not until the next week. The best way to find out would be to look at the date of Condatore's report. I mean, the text came to us in the form of a regular FBI report by Condatore. The date on the report would indicate when it

was typed, I would imagine, if it was a regular 302 form.

MR. MORGAN: Is that available, Mr. Lynch?

MR. LYNCH: It is marked as an exhibit, I believe.

THE COURT: He is talking about No. 7. That is dated March 26.

I believe that is what he is talking about.

BY MR. MORGAN:

Q So this would have been submitted to you presumptively on the following day?

A Well, that's right. If I saw it on the following day, which I would suspect I did not, because we had too much to do the next morning -- if it came in, I probably didn't even read it.

Q Do you know who transcribed it?

A A typist in the Washington Field Office, I would say.

Q But you don't know the individual who transcribed it?

A No, sir.

Q Now, I am sorry, go ahead. You were preparing a memorandum in Mr. Miller's office.

A We were working on a memorandum to the Director of

the FBI from Herbert J. Miller, Jr., requesting that the FBI make arrangements to monitor the conversation at the meeting among Bromley, Jones and Baker in Los Angeles the following night, that is, Friday night, March 26.

Q And --

A With the consent of Bromley and his attorney, Mark Sandground.

At the same time we were preparing that memorandum, we went back to the law books again, and I remember specifically going over what we thought were the relevant Supreme Court decisions again. This is on Thursday and this is the second time we had been through this that week.

We also were talking to Assistant Attorney General Miller, and to our First Assistant in the Criminal Division, Howard Willens, during this time, and discussing the advisability and the legality and the propriety of making arrangements to monitor this meeting.

Now, I would think that --

Q Now, when you say, "this meeting," you are referring to what? The meeting --

A The meeting of Bromley-Baker-Jones in Los Angeles on Friday evening, March 26, 1965.

Q Where?

A In Los Angeles.

Q Had you learned from these interceptions or this eavesdropping that the meeting was to be held at the Beverly Wilshire Hotel?

A No, we had not. We had inferred from the conversations or from Bromley's account to us of the conversations, one of the two, that the meeting was probably going to be either in the quarters of Mr. Jones at the Wilshire, because we learned that Jones was going to the Wilshire from these telephone conversations, or in the quarters of Mr. Baker at the Beverly Rodeo, where we knew he was staying, or in the quarters of Mr. Bromley at the Beverly Rodeo, where we knew Bromley was going to go and check in.

Therefore, one of the things that we planned to do and did do was to cover both hotels, the Wilshire and the Rodeo, because we didn't know where the meeting was going to take place exactly.

Q All right. Before we get to the actual coverage, at the time you were preparing this memorandum for Mr. Hoover, did you contemplate the type technique for this surveillance or eavesdropping?

A No, we did not, except, obviously, we contemplated that this would require the use of some sort of electronic equipment and we hoped and expected that it would be recorded on tape, and we knew that an indispensable prerequisite to doing this at all would be the firm and voluntary consent of Mr. Bromley and his attorney.

Q Well, you have made that quite clear, I think, Mr. Moore.

What I am more interested in here is in addressing this request to Mr. Hoover, were you indicating --

By the way, is the memorandum of that available?

A Yes. It is here.

(Whereupon the document was submitted to defense counsel by Government counsel.)

MR. MORGAN: This is not the same one you introduced?

MR. LYNCH: No, no.

BY MR. MORGAN:

Q Is it correct to say that you outlined the problem in the memorandum to Mr. Hoover without suggesting the particular investigative or surveillance technique to be utilized in covering those conversations?

A We didn't talk in terms of using the Kel Set or use of one of the other types of equipment that exist for this type of monitoring operation. We made it clear, however, that we were talking in terms of the use of equipment so that what was said could be preserved and proved.

Q And I believe you have already testified that this memorandum went to the FBI and that the FBI declined to perform this service for you, is that correct?

A That is right. We got a memorandum back the next day from the Director who said --

THE COURT: We have been all over that. You don't want to go over that again, do you?

MR. MORGAN: No, no, I don't.

THE COURT: He couldn't guarantee the security of the operation.

BY MR. MORGAN:

Q Now, upon the delination by the FBI to undertake this exercise, what did you then do?

By the way, I would like to ask this, Mr. Moore: At this point who was the captain of this operation? Who was running this show?

A Herbert J. Miller, Jr., I would say. He was the

person in charge and what we did we did having secured his permission.

So far as who was going to be in charge of what went on out in Los Angeles, I was.

Q You were in charge of that?

A Yes, I was.

Q That operation. And not Mr. Bittman?

A No, I was responsible.

Q All right. Now let's get back to the question.

After the FBI declined to undertake this monitoring, what did you then do?

A We went to the offices of the Bureau of Narcotics, the Treasury Department.

Q You and Mr. Bittman?

A That is correct.

Q Anybody else?

A No.

Q Whom did you see there?

A George Gaffney, G-a-f-f-n-e-y.

THE COURT: Whose idea was it to go over to the Narcotics Bureau?

THE WITNESS: Herbert J. Miller, Jr.



Now, we might have asked him: How about Narcotics.

And he might have said: I will call them.

Or he might have said --

THE COURT: But your recollection is he was the person to set up the conference and gave you the authority to go over there?

THE WITNESS: Yes, he called Gaffney.

BY MR. MORGAN:

Q All right, you are in Mr. Gaffney's office now. Go ahead.

A We told Gaffney what we wanted to do and asked him for his assistance in providing personnel and equipment. He said he would.

Q And what happened then?

A He called in John Thompson, who was an agent who was here in Washington, a Narcotics Bureau Agent, and they discussed equipment.

Thompson came up with four Kel Sets, which was the number that I said we needed.

Q Incidentally, I want to get the self-evident on the record. That was over in the Treasury Department, was it?

A The offices of Gaffney were in the Indiana Building.

Q I see. The Narcotics Bureau is a part of the Treasury Department, is that correct?

A Yes, sir. It was then. It is not now.

Q All right, go ahead.

A We met Thompson. Thompson showed us the equipment, explained what it could do.

We arranged to meet shortly thereafter in Sandground's office.

Q Go ahead. When you say, "we arranged to meet," who is "we"?

A Thompson, me, Bittman, Bromley, Sandground.

Q This is on the 26th?

A And possibly Mittler.

Q Was this on the 26th?

A Friday, the 26th.

Q All right, sir, go ahead. What happened in Mr. Sandground's office?

A Thompson taped a transmitter unit about the size of a pack of cigarettes to Bromley's belly, around his belt-line, with adhesive tape, and took a small, about a seven- or eight- or nine-inch wire, which was attached to that transmitter --

THE COURT: We have been all over this, Mr. Morgan. I am getting a little restless with repetitious testimony. We haven't got a jury here. I followed this very closely. He has testified to the size of it, where it was strapped to him, how the wires went, when it was done and where it was done.

What is the point?

MR. MORGAN: The question I wanted to ask Mr. Moore at this point --

THE COURT: Why don't you lead him right smack dab to what you want to bring out that wasn't brought out yesterday. I don't want to cut you off but get to the point you want to bring out.

BY MR. MORGAN:

Q Why was this put on Mr. Bromley here? Was he to wear this on the entire trip to Los Angeles?

A Yes, sir.

Q Or was this a trial run?

A No, he was to wear it the whole time.

Q Then --

A The answer to your question, why, is because we thought Baker was going to meet him at the airport, and we thought we had better have the equipment on him before

he met Baker, since it wouldn't have been very feasible to put it on after.

Q All right. So you depart for Los Angeles in the manner which you have indicated.

Now, it is not clear to me exactly what equipment was installed at the various points in Los Angeles and I would like for you to indicate that for this record.

You were staying at the Beverly Hilton, is that correct?

A I had a room at the Beverly Hilton and a room at the Beverly Rodeo.

Q I see. What electronic receiving equipment or other electronic equipment, for that matter, was located in your room or rooms?

A After we left the Beverly Hilton to disperse to the Wilshire and the Rodeo, no electronic equipment was left back at the Hilton.

In each of the four rooms, two in the Wilshire and two in the Rodeo, there was identical equipment, namely, an attache case which when opened revealed a tape recorder, a radio receiver, a set of earphones, and a plug where you plugged it into an electric outlet to get power. It is

known as a Kel Set. Its purpose is to pick up radio signals and record them, if the record switch is punched.

Q At this point, Mr. Moore, I am merely asking what equipment was there.

A Well, the same equipment in each of the four hotel rooms; the equipment was as I have just described it.

Q But no equipment at the Beverly Hilton?

A Not after we left the Beverly Hilton. We carried the Kel Sets with us to the Beverly Hilton, where we met with the people I mentioned yesterday; then we dispersed to the Rodeo and the Wilshire and each team took its Kel Set with it; and the rest you know.

Q Now in the two rooms at the Beverly Rodeo, I would like for the record for you to state who were in those rooms.

A Yes, sir.

Talcott and one Narcotics Agent in one room at the Rodeo.

Myself, Steve Miller and John Thompson in the other room in the Rodeo.

B. Franklin Taylor and a Narcotics Agent in one room at the Wilshire.

Bob Timlin and a Narcotics Agent in another room at the Wilshire.

That is it.

Q At the time the transmitter strapped on Bromley was transmitting the conversation about which we have been talking, were you listening to that conversation?

A Yes.

Q Now, was that in the room with the Narcotics Agent or in the other room?

A It was in the room with Miller, Thompson and myself on the second floor of the Beverly Rodeo Hotel.

Q All right. Was there a receiver in the other room where the Narcotics Agent was?

A Yes.

Q There was a receiver in both rooms?

A That is correct. There was a receiver in each of the four rooms.

Q I see. Was there a recording machine in each of the four rooms?

A Yes.

Q In all four rooms?

A That is correct. The equipment was identical in

each of the four rooms.

Q I see. All right.

THE COURT: On that, there is one point I have been thinking about, Mr. Moore, that I want to be clear on.

Do I correctly understand that Bromley had it within his control when and whether to transmit?

A He could turn his receiver on or off. There was a button on it.

THE COURT: So he could do that in the middle of a conversation, at the end of a conversation; he could omit a conversation; he could do it any way that suited his fancy, couldn't he?

THE WITNESS: That is correct.

THE COURT: There was no way that any of you listening would know whether or not he was doing matters of that kind?

THE WITNESS: Well, I would say, yes, there was a way. If we stopped receiving in the middle of the transmission, that would indicate that somebody turned the receiver off, or there might be alternative explanations for the same phenomenon.

THE COURT: Or that somebody wasn't talking.



THE WITNESS: That's right.

THE COURT: You couldn't tell.

THE WITNESS: Thompson would be better to answer that than I, Your Honor.

THE COURT: All right.

BY MR. MORGAN:

Q I believe it is correct, is it not, that Mr. Bromley did turn off his transmitter at one particular point and say he was going to listen to the radio. Do you remember that?

A That's right, right after he got into the Rodeo.

Q Then Mr. Bromley proceeded to the Beverly Wilshire Hotel where this conversation occurred, is that correct?

A Yes.

Q Was there any other surveillance technique employed in connection with this monitoring apart from what you have testified to?

MR. LYNCH: I object, Your Honor. What relevancy does this have to the motion to suppress?

MR. MORGAN: I am seeking to ask --

MR. LYNCH: On these particular recordings.

MR. MORGAN: This what I am asking, Mr. Lynch, may

have a bearing on whether they are admissible.

MR. LYNCH: You are getting into an area of trial at this point.

MR. MORGAN: Not at all.

THE COURT: Now, gentlemen, I took it that this motion was a motion designed to suppress any type of monitoring or surveillance of conversations; that the Government had represented these were the only ones.

MR. LYNCH: That is correct.

THE COURT: Certainly it is within Mr. Morgan's competence to inquire as to whether there were others.

MR. LYNCH: Mr. Morgan is not asking him about monitoring of conversations, Your Honor. He is asking any other surveillance techniques.

I assume he is asking about physical surveillance.

MR. MORGAN: Why make the assumption, Mr. Lynch?

MR. LYNCH: Then I object to the broadness of the question, if you are asking about other monitored conversations.

THE COURT: Mr. Morgan, I think you should confine your question at this stage to any kind of electronic monitoring or electronic surveillance, or whatever general

phrase of that kind covers what I think you have in mind.

MR. MORGAN: Let me be a little more specific.

BY MR. MORGAN:

Q You enlisted the aid and assistance of the prosecuting officials of the United States Attorney's Office in Los Angeles, is that correct?

A Yes.

Q Did they make available to you any additional electronic techniques or methods for monitoring these conversations?

A No.

Q Now, so far as you know, is the electronic method employed, namely, the transmitter on Bromley, the only technique utilized in monitoring these conversations?

A They were the only equipment utilized and that was the only method or technique which we utilized or attempted to utilize in order to overhear the conversation at the meeting at the Beverly Wilshire.

THE COURT: And you would include in that any kind of a device on the walls of the neighboring room, or anything of that kind, is that correct?

THE WITNESS: That is correct. The reception that

I have described is the only technique employed or attempted to be employed.

BY MR. MORGAN:

Q Now I would like to pass to another matter that was touched on and that is, namely, the use made of these materials obtained from the electronic surveillance.

You mentioned yesterday, I believe, that one of the things that you learned was the name of Neumeyer.

A Nemeyer, I think his name is. But maybe -- there is a Judge up in Chicago, he is dead now, named Nemeyer, and I may have him confused.

Nemeyer or Neumeyer. The first name was Al or Alvin.

THE COURT: Chairman of the Board of the First Western?

THE WITNESS: Yes, sir.

MR. MORGAN: That is right.

THE WITNESS: So whatever his name is.

MR. LYNCH: I object also to the characterization of the question.

Mr. Moore did not testify that he definitely got the name, Neumeyer, from that conversation but he might have

gotten it.

THE COURT: Well, he said, it may be the lead that brought us to know him.

MR. LYNCH: Yes.

THE COURT: That is what he testified to.

MR. LYNCH: Yes.

MR. MORGAN: Well --

THE COURT: According to my notes.

BY MR. MORGAN:

Q Now, I want to be sure about your testimony concerning the use made of these monitorings, Mr. Moore.

Is it not a fact that these monitorings, as such, were used before the grand jury?

A No, it is not a fact that these monitorings as such were used before the grand jury.

Q Were you present --

THE COURT: Before you get into that, Mr. Morgan, just so I understand, what difference would that make?

MR. MORGAN: Your Honor, I think it is certainly relevant to our entire suppression hearing.

THE COURT: The grand jury can hear materials of this type without making the indictment defective.

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MR. MORGAN: I am merely seeking, Your Honor, to ascertain the extent to which materials of this sort were presented to the grand jury. And I would assume that this is one of the very few witnesses that we will have in this area.

THE COURT: He testified that they were used in connection with the examination but not mentioned as such.

THE WITNESS: That is correct, and the grand jury did not know that there was any monitoring.

BY MR. MORGAN:

Q Now I ask this, Mr. Moore, not lightly, but were you present during the course of all the grand jury proceedings on this matter?

A The answer is, no.

Q Who was?

A Either myself or Mr. Bittman or Mr. Mittler or Mr. Taylor. At all times, I believe, or virtually at all times, there were at least two of us in combination. Usually the sessions that I wasn't at, Mr. Bittman was, and vice versa, but I am sure there are exceptions.

Perhaps I can assist you further by telling you that

every word of testimony before the grand jury was transcribed by the court reporter. There are some ten or twelve thousand pages of it, and I have read every word, most of it repeatedly. And I know what went on before that grand jury; and I tell you it was not used as such before that grand jury.

Q And if there has been a representation made by one of your associates in a judicial proceeding that it was used, that would be wrong?

MR. LYNCH: Your Honor, I object.

MR. MORGAN: He has been very categorical.

MR. LYNCH: Why should he ask him to comment on an unspecified representation by someone else?

THE COURT: He is under cross-examination, Mr. Lynch. He has made a categorical statement, and I will permit Mr. Morgan to pursue it within limits.

THE WITNESS: All right, I will say this: The fact of these overhearings was not revealed to the grand jury. Therefore, I answer your question that the monitorings, as such, were not used before the grand jury.

I say that is correct, they were not. And I don't care what anybody says, they were not.

Now, the information obtained from those monitorings and the very words of portions of the monitored conversations were put before that grand jury in the manner and form that I described yesterday.

Now that is my testimony.

MR. MORGAN: I will let that lie, Your Honor.

THE COURT: That is what he said yesterday.

MR. MORGAN: All right.

BY MR. MORGAN:

Q Now, just a few questions and I think you can be on your way, Mr. Moore.

Incidentally, I notice that in these recordings out in Los Angeles, that women's voices were picked up on the transmissions.

A One or more -- I think it was only one woman.

Q To your knowledge, were any women in the room when Bromley --

MR. LYNCH: Objection.

MR. MORGAN: I think it is very important, Your Honor, to indicate that this electronic device was picking up conversations from other places. It is most material if we are going to seek to assess what was said by

Mr. Bromley, Mr. Baker and Mr. Jones.

MR. LYNCH: That is not in issue here, Your Honor.

MR. MORGAN: That we have a recording that has picked up conversations of others?

MR. LYNCH: That is not in issue.

MR. MORGAN: I have asked the witness one question, and that is: To his knowledge, was anyone present in the room at the Beverly Wilshire other than Mr. Jones, Mr. Baker and Mr. Bromley.

MR. LYNCH: And I submit, Your Honor, this witness wasn't in the room with Mr. Jones, Mr. Baker and Mr. Bromley.

MR. MORGAN: This witness, Mr. Lynch, has testified about hearsay five times removed.

THE COURT: Well, the tape recordings, at least some of them, disclose the presence of a female voice. And the Court can assume if there was a female voice there was a female there.

What is the problem?

MR. MORGAN: The point, Your Honor, is that there was no woman in the room, and that this device Mr. Bromley had was picking up conversations in other rooms of the hotel.

MR. LYNCH: Well, I wasn't there. I don't think you were there, Mr. Morgan.

MR. MORGAN: Mr. Jones will testify.

THE COURT: Don't you gentlemen get into a colloquy in front of me, please, either of you.

MR. MORGAN: I am sorry, Your Honor.

MR. LYNCH: Sorry.

THE COURT: That goes to the question as to whether or not these are accurate transcriptions, which I mentioned this morning. I had thought that that issue was not before me at this time.

MR. MORGAN: It is not so much, Your Honor, a matter of accuracy of the transcription as to what it is that is transcribed.

In other words, my point is that we have transcriptions of conversations other than the conversation of these gentlemen.

THE COURT: Mr. Moore, was this device such that it was capable of intermingling with what was taking place in a particular room under surveillance conversations that were taking place elsewhere, or do you know?

THE WITNESS: I do not know.

THE COURT: I think you have got the wrong witness, in any event, on this.

MR. MORGAN: Yes.

BY MR. MORGAN:

Q One general question, Mr. Moore.

You used the expression, I believe, in the course of your testimony that in the course of the activities of you and Mr. Bittman and your associates in this matter, that you were not pulled along screaming, I think you said.

A Kicking and screaming.

Q What did you mean by that?

A What I meant was that we were not coerced into monitoring these conversations by Mr. Bromley or Mr. Bromley's attorney. We were very willing to monitor these conversations, and I didn't want to give the impression that the importunate pleading that was going on from Bromley and Sandground was what induced us to do this. It wasn't at all. We wanted to monitor the conversations.

Q I see. Now another point. While I realize you back away from this testimony a bit, I do want to probe it just briefly.

You made reference to the fact that a part of your

concern in this and, I would gather, your inclination to participate was the understanding that Bromley was in physical fear of Clifford Jones.

Now, where did you get that, if at all?

A I didn't say he was -- well, in the first place, I am not backing away from anything I have said here.

Q I think in your own testimony --

THE COURT: Let's not characterize the testimony.

BY MR. MORGAN:

Q Go ahead.

THE COURT: As I understand the testimony, there was a reference to fear of physical violence which you clarified later by saying that you believed it was a fear that Bromley had based upon the possibility that Jones would later find out that he had testified before the grand jury.

THE WITNESS: Yes.

THE COURT: That is what I recall the testimony to be.

Now Mr. Morgan is asking you, what is the basis for that? Is that your surmise or did Bromley say something to that effect.

I think that is what he is asking.

THE WITNESS: I believe Bromley -- I don't recall



clearly but I have an impression that Bromley may have said something to that effect. I know it was discussed and I am very reluctant to get into the nature of those conversations and those surmises and the considerations which were weighed. But if you insist, I will do it.

BY MR. MORGAN:

Q I am interested now in asking you if you got this from Mr. Bromley.

A My impression was that Bromley was concerned about what the reaction would be if and when Jones found out that he was cooperating with us.

I may be exaggerating or may have left a misleading impression when I said Bromley was in physical fear. I have reflected on that.

I will say that we were concerned with regard to the physical safety of Mr. Bromley. Now, the use of the word, "concerned," I would like to clarify. We paid sufficient attention to the possibility that some harm might come to Mr. Bromley, not at the personal hands of Mr. Jones, but possibly at the hands of others, that Bill Bittman and I discussed it, and discussed the matter of possibly providing some kind of bodyguard for Mr. Bromley. And I

believe there was some discussion of this sort between Mr. Bittman and I and Mr. Sandground; and we concluded that this should not be done because we felt that most likely our "concern" was unrealistic.

MR. MORGAN: Excuse me, Your Honor.

Thank you, Mr. Moore.

THE COURT: Mr. Moore, before Mr. Lynch has any additional questions, I have two that I would like to ask you.

Did Mr. Sandground, to your knowledge, at any time represent anyone else involved in the Baker investigation?

THE WITNESS: If he did, I don't now recall it. I do not now recall it, but I won't say that it is impossible that he did. I just don't recall any such instance, Your Honor.

THE COURT: Was it Mr. Baker that got him to act as lawyer for Mr. Bromley or was it Mr. Bromley who got him to act directly? Do you know?

A No, Your Honor, Mr. Bromley had a lawyer before, a Mr. Ehrlich, who had been obtained for him by Mr. Baker; and when Mr. Bromley went to Mr. Sandground, he left Mr. Ehrlich.

THE COURT: The other question that I want you to do the best you can with on is: When did you first consider that Mr. Jones was a subject for a possible perjury indictment?

THE WITNESS: Well, it was not later than April 27, 1965, because I put it in writing at that time in a long memorandum, about eighty-some pages to Jack Miller.

THE COURT: That is what I thought you said. But what I am asking you is when did you think he was a possible subject or a subject for a possible perjury indictment?

You understand what I am talking about?

THE WITNESS: Yes, sir.

THE COURT: That is a difference. I take it by the time you wrote in April an eighty-page memo, you felt you had a case.

THE WITNESS: Yes, we did.

THE COURT: What I am asking about is when in your mind, based on what you, yourself, thought in your conversations with Mr. Bittman, did you consider him a subject of a possible perjury indictment?

THE WITNESS: I considered him a possible subject of a perjury prosecution when I heard what his testimony was

before the grand jury, and that was Monday, March 21, 1965, in the morning.

THE COURT: So that from that point --

THE WITNESS: But I emphasize the word, "possible," Your Honor.

THE COURT: But from that point on, Mr. Jones was involved in the investigation in part at least because the Government felt he may well have perjured himself when he testified?

THE WITNESS: In part at least.

THE COURT: Mr. Lynch, do you have any questions?

MR. LYNCH: Yes, I do, just a few, Your Honor.

#### REDIRECT EXAMINATION

BY MR. LYNCH:

Q Mr. Moore, you had just made reference to this eighty-page memorandum of April 27.

You also testified yesterday that at some point you laid out the chronology of how Bromley came to you, and the discussions, and what transpired thereafter.

A That is correct.

Q Was that in the same memorandum?

A That is the memorandum I had reference to.

Q All right. That wasn't ever shown to or signed by

Mr. Bromley?

A No, it was not. Never shown to anyone outside the Department of Justice to this day that I know of.

Q And that didn't purport to be a substantially verbatim recital of what Mr. Bromley had said to you?

A It was not.

THE COURT: He wants to be sure you say it was a work product and not a Jencks Act statement.

THE WITNESS: I know where he is going, Your Honor.

THE COURT: We will decide that when the time comes, if we have to.

MR. LYNCH: May we have this marked as Government's Exhibit 8.

THE CLERK: Government's Exhibit No. 8 on the Motion to Suppress for identification.

THE COURT: What is that, 8?

THE CLERK: Yes, sir.

MR. LYNCH: Eight, Your Honor. This is a memorandum from Herbert J. Miller to the Director of the Federal Bureau of Investigation, dated March 25, 1965.

(Whereupon the memorandum from Mr. Miller to the Director of the FBI, dated March 25, 1965, was marked Government's Exhibit No. 8 on the Motion to Suppress.)

MR. LYNCH: And Government Exhibit 9 on the Motion.

MR. MORGAN: What is that? I cannot hear you.

MR. LYNCH: Motion Exhibit 9.

THE CLERK: Government's Exhibit 9 on the Motion to Suppress marked for identification.

THE COURT: What is the date of that, Mrs. Harris.

MR. LYNCH: That is dated March 26, 1965, and it is a memorandum to Files, from Austin Mittler.

(Whereupon memorandum to Files from Austin Mittler, dated March 26, 1965, was marked Government's Exhibit No. 9, for identification on the Motion to Suppress.)

MR. LYNCH: Government's Motion Exhibit 10.

MR. MORGAN: Can you hold it just one moment, Mr. Lynch.

With respect to Government's Motion Exhibit 9, Mr. Lynch, if you were to offer this in evidence, being what it is, I would like to have it established that Mr. Moore has seen this.

MR. LYNCH: Government's Exhibit 10, Your Honor, is a form of consent dated March 24, 1965, signed by Wayne L. Bromley.

(Whereupon Form of Consent signed by Wayne L. Bromley, dated March 24, 1965, was marked Government's Exhibit No. 10, for identification, on Motion to Suppress.)

MR. LYNCH: Government Exhibit 11 is a consent dated March 26, 1965, and signed by Wayne L. Bromley.

(Whereupon Consent signed by Wayne L. Bromley, dated March 26, 1965, was marked Government's Exhibit No. 11, for identification on Motion to Suppress.)

MR. MORGAN: I am sorry. My request was, if you are to offer these in evidence, I would at least like as a predicate that Mr. Moore at least has seen them.

THE COURT: The two consents, I take it, were the ones covered by the testimony.

MR. LYNCH: They have already been covered and I will cover 8 and 9 with Mr. Moore now.

THE COURT: Yes.

BY MR. LYNCH:

Q Will you tell me, Mr. Moore, what Government's Motion Exhibits 8 and 9 are?

A Government's Exhibit 8 is a carbon copy of a memorandum dated 25 March, 1965. It was drafted by Austin Mittler for initialing by Herbert J. Miller, Jr.



It was approved by me and Bill Bittman before it was carried up to Mr. Miller's office for Mr. Miller to read it and take what action he desired on it.

It was subsequently initialed by Mr. Miller, and it was hand-carried over to the Federal Bureau of Investigation on the same date that it bears, namely, March 25, 1965.

It requests the FBI to assist in the monitoring of the Los Angeles meeting.

Government's Exhibit No. 9 is a memorandum to File from Austin Mittler, which is dated March 26, 1965. It is a carbon copy of that document, and I do not recall when I first read this memorandum by Austin Mittler. I suspect it was not until the following week.

Q Were you aware of the facts set forth in that memorandum on the date March 26, 1965?

A Yes, I was.

Q And that was orally from Mr. Mittler?

A Yes.

Q Showing you Government's Exhibits 10 and 11, the Motion Exhibits 10 and 11, Mr. Moore, what are they?

THE COURT: Those are the two consents that you

testified to.

BY MR. LYNCH:

Q Are those the consents that you already testified about?

A Yes, they are, and they were signed in my presence. In the case of 10, it bears my initials; in the case of 11, it doesn't. But it was signed in my presence by Wayne Bromley.

MR. LYNCH: I offer these, Your Honor.

THE COURT: Any objection, Mr. Morgan?

MR. MORGAN: No objection, Your Honor.

THE COURT: May I see them?

They may be received.

THE CLERK: Government's Exhibits 8, 9, 10 and 11 marked in evidence.

(Whereupon Government's Exhibits 8, 9, 10 and 11 were received in evidence on the Motion to Suppress.)

THE COURT: This Government 8 says the telephone calls from Bromley to Baker, from Bromley to Jones were placed by the FBI.

Is that your testimony?

THE WITNESS: No, and that is not my recollection

either.

THE COURT: I call counsel's attention to the fact that this memorandum says the FBI put in the telephone calls, which I will take to be the fact on the basis of Mr. Miller's memorandum.

THE WITNESS: It seems to me, Your Honor, that the logs, themselves, or the transcripts, themselves, of those conversations would probably indicate one way or the other.

As I recall it, Bromley had conversation with the operator, and it shows right on the transcript.

THE COURT: Who is Charley Lyles?

THE WITNESS: One of the two FBI supervisors in the Accounting and Fraud Section, who were on liaison with the Bureau as a matter of actual practice.

THE COURT: Well now, in Government Exhibit 9 -- I don't know for what purpose the Government is offering this exhibit.

MR. LYNCH: Your Honor, it just rounds out the record and fills in the testimony of Mr. Moore.

THE COURT: Well, it shows on its face that the Federal Bureau of Investigation was urging upon the members of the Justice Department staff a deliberate program of

entrapment.

I will take it for what it is worth.

MR. MORGAN: I had thought to offer it for the defense, Your Honor.

THE COURT: It clearly is an entrapment document, Mr. Lynch. Clearly an entrapment document.

Now, I can't tell to what extent the entrapment went forward based on this document, but I view it as an entrapment document, and I view the suggestion of the Bureau as a most unethical one.

You may have this, Mrs. Harris.

So if there is anything further you wish to inquire of this witness concerning it, this would be the appropriate time to do so.

This is a suggestion that Bromley induce Mr. Jones into making representations to him by stating facts that weren't so.

BY MR. LYNCH:

Q In any event, Mr. Moore, what happened thereafter? Were those suggestions adopted or what transpired thereafter?

A No, we rejected it.

MR. MORGAN: Just a moment. In order that I may be

clear, and I would like to be, when you say, "thereafter," thereafter what, Mr. Lynch?

MR. LYNCH: Thereafter, after Mr. Moore became familiar with the facts set forth in that memorandum.

THE COURT: He isn't clear that he did. He testified when he qualified the document that he was not sure that he was aware of it at the time.

THE WITNESS: I wasn't aware of the document but I was aware of the substance of the conversation because Mittler told me.

I think I had gone to Los Angeles by the time the document was actually typed up, and that is my point. But I knew about the conversation, and it took us about perhaps twenty seconds to decide not to follow the suggestion that is related in Government's Exhibit 9. And we did not follow it.

THE COURT: Had comparable suggestions been made by the Bureau with respect to this matter on other occasions?

THE WITNESS: I don't recall any such, Your Honor. And I would also say that this was not a suggestion by the Bureau.

THE COURT: It was a suggestion by your liaison man

on this case, wasn't it?

THE WITNESS: It was a casual conversation by a man who is not a lawyer, and there is a difference between loose talk and considered action.

The point is, the suggestion was rejected. It was rejected immediately. We never gave it serious consideration nor would we under any circumstances.

MR. LYNCH: I have no further questions, Your Honor.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: No, Your Honor.

THE COURT: Thank you, Mr. Moore. The Court wants to say to you --

MR. MORGAN: Your Honor, may I be forgiven? I have just one question.

THE COURT: Your last chance.

#### REXCROSS EXAMINATION

BY MR. MORGAN:

Q Mr. Moore, were any conversations of Mr. Jones and Mr. Bromley recorded after they left the Beverly Wilshire Hotel?

A No, conversations were reported to us by Bromley but they were not picked up on the equipment and they were

not recorded.

MR. MORGAN: I see.

THE COURT: Mr. Moore, I want to thank you. You have been on the stand a long time. The Court appreciates your effort to distinguish, as you have gone through this, between what you knew and what you heard.

THE WITNESS: Yes, sir.

THE COURT: It has been helpful.

THE WITNESS: Thank you, Your Honor.

THE COURT: You are finally excused.

(Witness excused.)

THE COURT: Would this be an appropriate time to take a recess?

We will take a five-minute recess now, gentlemen, and give Mr. Morgan a chance to have a smoke.

(Whereupon a short recess was taken.)

MR. LYNCH: Paul Brown.

Whereupon --

PAUL BROWN

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:



**DIRECT EXAMINATION**

**BY MR. LYNCH:**

**Q** Will you state your name, sir.

**A** Paul Brown.

**Q** And your residence?

**A** Scottsdale, Arizona.

**Q** Mr. Brown, what is your occupation?

**A** I am a Special Agent, Federal Bureau of Investigation.

**Q** And what is your post of duty?

**A** In Phoenix, Arizona right now.

**Q** And before Arizona, what was your post of duty?

**A** Washington, D. C.

**Q** And when did you leave Washington, D. C.?

**A** January of 1966.

**Q** Prior to that time, how long had you been in the Field Office in Washington, D. C.?

**A** About eleven years.

**Q** In March of 1965 and thereafter, did you have any assignment in connection with the Robert Baker investigation?

**A** Yes, sir, I was the case agent in that particular investigation.

**Q** Now, referring you to the date March 23, 1965,

did you conduct any investigation thereafter, after the date of March 23, 1965 relating to a Clifford Jones?

A There was an investigation conducted thereafter. It came from the Bureau in the form of what is called an AIRTEL. It was dated in June, June 9, 1965, and consisted of a copy being furnished to the Washington Field Office, because we were origin in the matter, but it was directed to Los Angeles and Las Vegas.

It included subpoenas for those offices. For Los Angeles, the subpoenas were for hotel records at the Beverly Wilshire and the Beverly Rodeo Hotels.

The Las Vegas subpoena concerned telephone records of Mr. Jones and companies with which he was connected. And there was also a request made of the Las Vegas office to determine what airline had been used by Mr. Jones to travel to Los Angeles on the date of March 26, 1965.

Q Incidentally, did you have a separate file opened at or about that time on Cliff Jones?

A No.

Q Sir?

A No.

Q Were you aware during this period of time that a

grand jury had been impaneled in the District of Columbia and was investigating various matters in connection with the Baker case?

A Yes, sir, I was.

Q Was there any other investigation that you did other than that that you have related after March 23, 1965?

THE COURT: Involving Mr. Jones.

BY MR. LYNCH:

Q Involving Mr. Jones.

A The only -- well, we did some investigation in connection with First Western Financial Corporation, which would involve him from the standpoint of his connection with that firm.

Q Is that what you were looking into, his connection with that firm?

A Yes.

Q And anything else?

A The only other item connected with it could have been an interview which we conducted in Washington, D. C. of a Doris Kaufman.

Q And that is all?

A Yes.

MR. LYNCH: I have no further questions,  
Your Honor.

THE COURT: Perhaps this would be a good time to  
change reporters.

Harper  
fls.

## CROSS EXAMINATION

BY MR. MORGAN:

Q Mr. Brown, when you referred to yourself as having been the case agent in this matter, state briefly what that means, will you please?

A The Washington field office was the office of origin in the matter, which meant that the Washington Field Office more or less directed the investigation which was what it was doing and what particular leads and that sort of thing.

I was the individual to whom the case was assigned so I was primarily responsible for what direction we want, and seeing about the leads and putting together and writing the reports.

Q Being the case agent, would it be fair to assume that it meant that you were informed about all of the elements in so far as the FBI was concerned affecting this investigation?

A I think so.

Q Now, you made reference, I believe, to an interview of a Mrs. Kaufman, is that correct?

A Yes.

Q Do you recall when that occurred?

A I have probably got the date here if I can refer to a note.

Q Thank you.

A That was conducted June 10th, and then another was conducted the following day -- the 10th and 11th, 1965.

Q Did you make the interview?

A To my recollection I did. I am not certain, but I think I did.

Q Did you do that alone or were you accompanied by another agent?

A There was another agent.

Q Who was he?

A It could have been George Medcalfe. I am not certain. I will have to look.

Q That is all right. I understand.

Did you make this interview of Mrs. Kaufman based on independent investigation of the FBI, or were you requested to do it?

A We were requested. That is my recollection.

Q By whom?

A We got leads in one or two ways. Everything came through the Bureau, but it might have a copy of a Department

memorandum attached to the cover letter, or it might be directly from the Bureau stating that the Department desired an interview be conducted of Doris Kaufman. I don't recall.

Q You don't recall at this time whether you conducted that interview pursuant to a request?

A I am sure it would have been pursuant to a request. I don't know whether it would have been directly from a memorandum.

Q At any rate, a lead to interview Mrs. Kaufman was not developed by the Bureau?

A No.

Q I see.

Q Were you mindful on March 23, 1965, Mr. Brown, of any investigation being conducted concerning Mr. Jones by agents of the Department of Justice.

A Well, I reviewed the file on this to determine just exactly what I might have been aware of and it doesn't help me particularly.

During this time I was in contact regularly with the Department, and it is entirely probable and possible that I either was aware of it then or within a day or two after. I don't know precisely. In other words,



I don't know at what point I found out that the Department was talking with Mr. Bromley. In other words, I am unable to pinpoint specifically on that date --

Q Does the name Mr. Donald Moore and Mr. William Bittman mean anything to you?

A Yes.

Q All right, did you become mindful at any point that Mr. Bittman and Mr. Moore were conducting investigations concerning Mr. Jones?

A Investigation? I don't know what you mean by that.

Q Let me put it to you this way. When did you become mindful if at all, that on March 23, 1965, a conversation between Mr. Bromley and Mr. Jones was monitored at Mr. Bromley's home?

A I would say within a day or so after it took place. That would be about the best I could say. If not aware of it at the time, subsequent. I presume it would be subsequent since I didn't work with the Department.

Q You were not a participant in this?

A No.

Q Did there come a time to your recollection, Mr. Brown, when attorneys from the Department of Justice made

made a request of the FBI for electronic surveillance of some contemplated conversations in Los Angeles?

A I was aware that this took place, yes.

Q You mean that you were aware that the request was made.

A Sometime after it was made I was aware that a request was made.

Q And, do you know of your personal knowledge what disposition the FBI made of that request?

A No.

Q As the case agent, was that something that would not normally come to your attention?

A That would be -- if I understand you correctly now. The request by the Department of the Bureau?

Q Yes.

A To engage in covering a meeting. Is that what you mean?

Q I used the term electronic surveillance.

A Electronic surveillance. This wouldn't be handled by me. I wouldn't have any say so at all. It would be handled by someone else.

THE COURT: You would get a report if it had been done. You would be the one that would get the report

so your file would be complete, but you wouldn't be working on it, is that correct?

THE WITNESS: Except in the area of anything like this. There was a distinct separation of what I got from what was done in this instance. In other words, this was handled in another file. I didn't get -- I was separated from it. To my knowledge I never read it.

BY MR. MORGAN:

Q That is fair enough. Do you know an agent named Charles Lyles?

A Yes.

Q Who was he?

A He was --

Q At this time we are talking about.

A At this time we are talking about he was a Bureau supervisor and he handled the Baker case.

Q He was the supervisor in the FBI headquarters of the Bobby Baker investigation, is that correct?

A Yes.

Q You were in the Washington Field Office.

A That is right.

Q He was in the Bureau?

A Yes.

Q Is he the individual in the Bureau with whom you maintained your liaison in contact in the Baker investigation?

A Yes.

Q Were you mindful, Mr. Brown, on the morning of March 25, and 26, 1965, attorneys from the Department of Justice were present when calls were initiated by Wayne Bromley to Clifford Jones and Bobby Baker.

A You mean at the time.

Q Yes, at the time.

A No.

Q When did you become mindful of that?

A Probably in discussion with the Department or -- that is probably how I would have found out.

THE COURT: You mean this agent Condatore didn't operate under your supervision?

THE WITNESS: No. Like I said, there was a distinct effort made to keep that completely away from me, the purpose being that it was anticipated that I would possibly testify in the Baker proceedings that came along and there was no desire to raise that issue at a subsequent period. So, I was kept completely out of it.

BY MR. MORGAN:

Q You mean kept out of this monitoring business?

A Right.

Q Is that established Bureau policy to shield its agents from participation in these things if they are going to testify?

A No, I don't know about a established Bureau policy. I know in this instance that was the desire to keep me out of any situation.

Q I see. Was that because that there was concern that that would compromise your testimony? Was that the problem?

A I don't know the reason for it.

Q But, that was the way it was.

A It was just a decision that was made above my level.

Q I understand. Now, when did you become mindful the first time of a plan of representatives of the Department of Justice to proceed to Los Angeles, California for the purpose of monitoring conversations of Bromley, Baker and Jones?

A I think that would be after they came back.

Q After they came back from Los Angeles?

A Yes.

Q Were you ever made mindful of what happened

in Los Angeles in an official way?

A No.

Q No memoranda ever was submitted to you as the case agent?

A No.

Q To your knowledge, was the FBI requested to make any investigation in connection with the trip to Los Angeles by the lawyers in the Department of Justice?

A Not to my knowledge.

Q Well, let me ask you this. Did you not receive reports submitted by agents of the Los Angeles office concerning activities in connection with the surveillance of Mr. Jones in Los Angeles?

A I am not aware of any surveillance.

Q Did you -- I repeat again. Did you as the case agent, and I assume you would receive copies of reports from Los Angeles. As the office of origin in Washington, you would get those reports, would you not?

A Right.

Q Do you recall having received any reports out of the Los Angeles office recounting FBI investigation in Los Angeles at the Beverly Wilshire Hotel, at the Beverly Rodeo Hotel or otherwise in connection with the trip to

Los Angeles of the Department lawyers?

A As I indicated earlier, there was a request from the Bureau to obtain records of the hotel.

THE COURT: That was later in June.

THE WITNESS: That was in June, and that the investigation conducted and these records were furnished from Los Angeles to the Bureau by means of a letterhead memoranda rather than a report. Is that what you are referring to?

BY MR. MORGAN:

Q Well, let me put it this way.

THE COURT: He says that is all he heard about.

THE WITNESS: This is it.

BY MR. MORGAN:

Q That is the only reports you received?

A Yes.

Q I see. Am I to understand as the case agent, Mr. Brown, you received no memoranda and no reports with respect to any investigation made by Mr. Bittman and Mr. Moore concerning Mr. Clifford Jones.

A That is right.

Q Never saw it?

A No.



Q Now, you used a term here that I think we have heard before, but state briefly what it is. You used the term air-tel. What do you mean?

A It is a teletype sent by airmail. The purpose is to give it more expeditious handling than a routine letter. It is treated as far as the office that receives it, and you handle it like a teletype. You handle it expeditiously.

Q I see. That is an interoffice flag for expedited handling, is that correct?

A Yes.

Q It does go by mail?

A Right.

Q You mentioned certain investigation that was made, I believe, subsequently in terms of check out of airlines and hotels, is that correct?

A Yes.

Q In terms of Mr. Brown?

A Yes.

Q Thank you, Mr. Brown.

MR. LYNCH: No questions.

THE COURT: You are excused.

(Witness leaving stand.)

## WAYNE BROMLEY

was called as a witness, and, having been first duly sworn,  
was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. LYNCH:

Q State your full name?

A Wayne L. Bromley.

THE COURT: Mr. Bromley, you realize you are  
entitled to counsel as a witness. Do you wish to have  
counsel?

THE WITNESS: No, I do not, your Honor.

THE COURT: Very well.

BY MR. LYNCH:

Q Mr. Bromley, where do you live?

A 9108 Seven Locks Road, Bethesda, Maryland.

Q Now, Mr. Bromley, what is your occupation?

A I am an attorney.

Q Referring you, Mr. Bromley, back to the date of  
February, January and February of 1965, did you receive a  
Grand Jury subpoena calling for your appearance before  
the Federal Grand Jury here in the District of Columbia?

A Yes, I did.

Q Now, sometime thereafter what -- withdraw that.

Did at sometime you retain Mark Sanground as your attorney?

A I did.

Q Would you tell us when that was?

A To the best of my recollection it was the second of February.

Q What year?

A 1965.

Q Thereafter did you discuss with Mr. Bromley what your legal problems were?

THE COURT: Sandground..

Q I am sorry, Mr. Sandground what your legal problems might be anticipated.

A I did.

Q And did at sometime you go with Mr. Sandground to the Department of Justice?

A I did.

Q And, did you speak with anyone there?

A Yes.

Q And with whom did you speak?

A With Mr. Bittman and Mr. Moore.

Q Do you recall when that was? If not exactly approximately.

A I believe that was approximately around the 10th or so of February.

Q 1965?

A '65.

Q Now, did at some point you testify before the Grand Jury in February of 1965?

A I did.

Q And, referring you to the date of February 23, 1965, does that refresh your recollection as to the date you appeared and testified before the Grand Jury?

A I believe it was.

Q Had you had several conferences with Mr. Moore and with Mr. Bittman and with Mr. Sandground prior to your appearance on that day?

A Yes, I had.

Q Now, sometime thereafter did you become aware of the fact that Mr. Jones had appeared before the Grand Jury in the District of Columbia?

A I did.

Q And, if you can tell us when you became aware of that. If not, precisely approximately.

A It was approximately on the 19th of March, that I was informed of this fact.

Q Who informed you?

A A Mrs. Dee Kaufman.

Q Who is Mrs. Kaufman?

A She was a secretary.

Q Did you have a conversation with her?

A Yes, I did.

Q Thereafter or sometime thereafter, did you personally receive a telephone call from Mr. Jones?

A I did.

Q And, can you tell us what date that was?

A To the best of my recollection it was around the 22nd of March.

Q That would have been the following Monday, the 22nd?

A Yes.

Q And, what time of day was that?

A It was in the evening -- 9:00 o'clock or something like that.

Q Did you have a conversation with Mr. Jones?

A I did.

Q And, thereafter, did you contact anyone?

A Yes, after talking with him I contacted Mr. Sanground.

Q When thereafter did you contact Mr. Sanground?

A Immediately after talking with Mr. Jones.

Q Did you have a conversation with Mr. Sandground?

A I did.

Q And, thereafter, did anyone come to your home?

A Yes, a little later in the evening Mr. Sandground came out with Mr. Bittman and Mr. Moore.

Q Was anyone with them?

A Yes, there was a woman with them and another gentleman.

Q Was there a discussion of the woman who was with them? With draw that. Do you know what the woman with them -- what her function was?

A It was my understanding she was a courtreporter.

Q Was there a discussion of the fact that she should listen at the phone and record a return call that you should make to Mr. Jones?

A Yes, there was.

Q Did you discuss that with your attorney, Mr. Sandground?

A Yes.

Q Was that discussed in the presence of Mr. Moore and Mr. Bittman?

A To the best of my recollection it was first discussed with Mr. Sandground alone and then with Mr.

Bittman and Mr. Moore.

Q Did you discuss that at the time that you first placed the call to Mr. Sandground after you hung up on the call from Mr. Jones?

THE COURT: Discuss what, Mr. Lynch?

MR. LYNCH: A return call to Mr. Jones.

THE COURT: Did he discuss it with Mr. Sandground did you say?

MR. LYNCH: Yes, did he discuss it with Mr. Sandground.

THE WITNESS: I don't believe we did at that time.

BY MR. LYNCH:

Q In any event, at that time, when Mr. Moore and Mr. Bittman, and the courtreporter and Mr. Sandground were in your house, you say you think you first discussed it with Mr. Sandground and then you discussed it with the other gentlemen?

A Yes, that is correct.

Q Did you execute a written consent?

A I did.

Q To permit the courtreporter to listen in on the telephone conversation?

A Yes.



THE COURT: I am sure there is no dispute as to the consent.

BY MR. LYNCH:

Q Now, would you tell us how many phones at that time you had in your home?

A I had 130 phones -- a main line with an extension and then a separate line.

Q In other words, two phones on one number, and another number with a separate phone?

A Yes, that is correct.

Q They were consecutive numbers?

A Yes, they were.

Q Now, where was the extension located, and where was the phone with the two extensions really? Where were the two extensions located??

A The one was in the kitchen and the other was in my bedroom.

Q Now, were they regularly installed extension phones in your home?

A Yes.

Q Had they been there for sometime prior to this evening?

A Yes.

Q Now, would you tell us just what you did in the course of that after you discussed that with your attorney and Mr. Bittman and Mr. Moore?

A Mr. Sandground and I went to my bedroom, and I called Mr. Jones.

Q Now, do you know where Mr. Moore and the court reporter went?

A In the kitchen of my home.

Q Was that an extension phone?

A Yes.

Q Were you aware when they went to the kitchen that they were going to have the courtreporter listen in on that extension phone and record the conversation?

A Yes, I was.

Q As a matter of fact, was the diaphragm -- the mouth piece of the kitchen extension removed so it wouldn't pick up any transmissions?

A Yes.

Q Were you aware of that?

A Yes.

Q Thereafter did you place a call to Mr. Jones and speak to him?

A I did.

Q And, now, at the termination of that conversation, do you recall what if anything happened?

A Well, I believe that we went down to my family room and the courtreporter read over her transcript.

Q And, thereafter, did they depart?

A Yes, they did.

Q Now, Mr. Bromely, sometime thereafter, did you again receive a call from Mr. Jones?

A I did, in the next evening, I believe.

Q That would be Tuesday evening, the 23rd?

A Yes.

Q And, after you received that call, did you tell anyone about it?

A Yes, I told Mr. Sandground about it.

Q To your knowledge did Mr. Sandground in turn advise Mr. Moore and Mr. Bittman of this call?

A I think so.

Q Thereafter did you arrange or was there an arrangement made to record certain telephone calls at Mr. Sandground's office which you were going to make?

A Yes, there was.

Q And, that was on the 24th, was it not?

A Yes, it was.

Q Wednesday the 24th?

A Yes.

Q Did you consent to that arrangement?

A I did.

Q Did you discuss that arrangement with your attorney?

A I did.

Q Before you consented?

A I did.

Q Did you explore it fully?

A Yes.

Q Similarly on the evening of the 22nd, did you explore it fully with your attorney before you agreed?

A Yes, I did.

Q Thereafter did in fact, an agent as well as Mr. Moore and Mr. Bittman come to Mr. Sandground's office and in their presence did you place certain calls?

A I did.

Q Now, do I understand that you weren't able to get through on the 23rd to Mr. Jones and Mr. Baker?

A Yes, that is correct.

Q These are the people who you were going to call, is that correct?

A Yes.

Q Then, on the 25th were further calls placed?

A Yes, they were.

Q Were those calls monitored?

A They were.

Q By an agent of the Federal Bureau of Investigation who placed the device on the phone?

A Yes.

Q Had you consented to that?

A I did.

Q Was Mr. Moore and Mr. Bittman there at that time?

A I don't recall.

Q How about Mr. Sandground?

A Yes, he was present.

Q It was from your attorney's office?

A Yes, that is right.

Q Now, it was the upshot of these calls, was it not, that you would meet with Mr. Baker and Mr. Jones in Los Angeles?

A Yes, that is correct.

Q In that connection did you discuss with your attorney, and or others and if so whom, the facts that you were going to go out there with a device on you that would transmit the radio signals?

A I did.

Q And, do you remember when you talked about that to your attorney?

A It would have been either the afternoon of the 25th or the morning of the 26th or perhaps both.

Q All right. Did you consent to wearing such a device that would transmit radio signals?

A I did.

Q Was that done after you discussed it fully with your attorney?

A It was.

Q Now, would you tell us physically what was done on the afternoon of the 25th when the device was placed on your body? Where was it done?

A It was done in Mr. Sandground's office.

Q And, who was there at the time it was done?

A Mr. Sandground was present and the agent who attached it to me.

Q Do you recall if Mr. Moore and Mr. Bittman were there?

A I don't recall.

Q You don't say they weren't there. You just don't recall whether they were there or not?

A That is right.

Q Thereafter did you proceed out to Los Angeles?

A I did.

Q And, what did you do when you got to Los Angeles?

When did you get there?

A It was approximately 7:00 or 7:30 that evening that I went.

Q Los Angeles time?

A Yes, that is correct.

Q And, you went --

A I went directly to the Beverly Rodeo Hotel and registered.

Q All right, now, did you thereafter -- were you aware that other people were in the vicinity with devices to receive the transmissions that you would be making from the devices that were attached to your body?

A I was.

Q Did Mr. Sandground to your knowledge also go out to Los Angeles?

A Yes.

Q Did you meet anyone after you had registered at the Rodeo?

A Yes, I met Mr. Baker.

Q And, where did you meet him?

A I believe in the lobby of the hotel.

Q Of the Rodeo?

A Yes, that is correct.

Q Was he with anyone?

A Yes, he was with someone else.

Q Did you go any place thereafter?

A Yes, we went to the Beverly Wilshire Hotel.

Q And, who if anyone did you meet there?

A Mr. Jones.

Q Where did you meet Mr. Jones?

A We met him at the door of his suite and then he and Mr. Baker and I went into the bedroom.

Q And, did you and Mr. Baker and Mr. Jones have a conversation?

A We did.

Q Were you aware that the conversation --

THE COURT: Why did you go in his bedroom?  
Were there other people there?

THE WITNESS: Yes, your Honor, there was another person that was with Mr. Baker at the hotel that accompanied us.

THE COURT: Who was that?



THE WITNESS: I don't recall the name, your Honor.

THE COURT: A lady?

THE WITNESS: Yes.

THE COURT: And, so, you went in the bedroom?

THE WITNESS: Yes.

THE COURT: And closed the door of the bedroom?

THE WITNESS: Yes, your Honor.

BY MR. LYNCH:

Q Now, did you thereafter have a conversation with Mr. Jones and Mr. Baker?

A I did.

Q And, were you aware at that time -- withdraw that. Were you told at the time that the device was installed on you how the device operated?

A Not exactly how it operated as such.

Q Was there an off and on switch of some sort?

A Yes, there was.

Q I assume when you rode out to Los Angeles on the airplane, you had it in the off position?

A Yes.

THE COURT: At some point you want to stop leading, Mr. Lynch, I suppose to develop what his testimony is.

You have testified today. He has not testified at all so far as I am aware.

BY MR. LYNCH:

Q What if anything did you do to the device?

A Before I left the Beverley Hotel, I flipped the on switch.

Q Do you recall approximately how long -- was this switch on during the period of the conversation?

A It was.

Q Approximately how long was that?

A Approximately an hour or two hours perhaps.

Q Thereafter what if anything happened? Did you leave the room?

A Yes, Mr. Baker left and Mr. Jones and I left together. He was on his way to the airport and he dropped me off at the Beverly Hilton Hotel on his way.

Q He was on his way where?

A He was on his way to the airport, I understood.

THE COURT: What did you tell Mr. Jones as to why you wanted to see him in his suite when you entered?

THE WITNESS: Well, it wasn't the fact that I wanted to see him, sir. It was the fact that during our telephone conversation we decided --

THE COURT: So when you arrived, what did you say to him? You came to his suite with Mr. Baker and a woman?

THE WITNESS: Yes, that is correct.

THE COURT: You knocked on the door or rang or something.

THE WITNESS: Yes.

THE COURT: Came to the door and what happened.

THE WITNESS: We came to the door and greeted each other and we decided to go into the bedroom.

THE COURT: What was said about that?

THE WITNESS: Your Honor, naturally, we didn't want to discuss it in the present of the lady. So, she - would go to the bedroom and we stay there or we would go. So, she stayed there and watched television while we went in.

THE COURT: Whose suggestion was it that you go into the bedroom?

THE WITNESS: I don't recall, sir.

BY MR. LYNCH:

Q In any event, you parted with Mr. Jones at approximately what time? That is on the evening of March 26, 1965?

A I would say approximately around 10:30 or so.

Q Now who paid your expenses out to the Las Vegas meeting?

A My attorney picked up the ticket and while I was in Los Angeles I was partially reimbursed by Mr. Jones.

THE COURT: Before we get into that -- we seem to be going very rapidly here. Did you have your machine on while you were with Mr. Jones in the car?

THE WITNESS: In the car?

THE COURT: Yes.

THE WITNESS: Yes, sir, to my recollection I did.

THE COURT: So, you were broadcasting your conversations with him during the time He was giving you a ride to the Beverly Wilshire?

THE WITNESS: I imagine I was, sir. I don't remember exactly what point in the evening I turned it off.

THE COURT: Well, you do remember that you had it on in the car?

THE WITNESS: Yes, I did, your Honor.

BY MR. LYNCH:

Q Other than your expenses -- other than your out of pocket expenses in connection with this trip to

Las Vegas, were you paid by the government any money in connection with these series of activities we have just discussed?

A I was not.

Q Were any promises made to you by Mr. Bittman or Mr. Moore or anyone else connected with the government in connection with these series of activities?

A No, there was not.

THE COURT: Well, there were promises made. They said they would pay your expenses, didn't they?

THE WITNESS: Yes. I didn't understand the question that way. I thought he said over and above those, sir.

BY MR. LYNCH:

Q Were Mr. Sandground's expenses reimbursed to your knowledge?

A To my knowledge they were.

Q And, that was part of the agreement, was it not, before you went out from Washington D. C. to Los Angeles?

A Yes.

THE COURT: I have your testimony, Mr. Lynch? I really believe that the Court must intervene.

This witness has been on the stand for quite a while now, and he has hardly testified to anything. You have been testifying.

MR. LYNCH: Your Honor, I thought I would try to get it to the point.

THE COURT: It is all right as to where he went and what plane he got on, but when we get to crucial questions, you have been leading this man, and I must take in to account his relations with the government.

Therefore, I am discounting leading testimony, because, when he responds to a leading question, he having live for a long time as a government informer, I am not going to pay much attention to his testimony. I so tell you.

BY MR. LYNCH:

Q Mr. Bromely, would you tell the Court what if anything by way of promise or inducement or pay was made to you to do the things that you have discussed here as having done?

A Absolutely nothing was promised at all.

Q Of course, how about payment for expenses.

A Yes, my expenses out there. My expenses would be reimbursed.

MR. LYNCH: I have no further questions, your Honor.

## CROSS EXAMINATION

BY MR. MORGAN:

Q Mr. Bromley, when in point of time did you discontinue the services of Mr. Myron Ehrlich and retain Mr. Sandground?

A Actually at no time did I ever retain Mr. Ehrlich as such. I did retain Mr. Sandground approximately February 2nd. Prior to that time I had been assisted by Mr. Ehrlich during --

Q By whom?

A By Mr. Ehrlich.

Q Yes.

A During the Senate Rules Committee Investigation.

Q Did you pay Mr. Ehrlich?

A No, I did not.

Q So, did he appear there with you?

A Yes.

Q Did you represent that he was your counsel at that time?

A I did.

Q Now, what occasioned your engaging Mr. Sandground?

A At that time, rather during this period, Mr. Ehrlich represented Miss Tyler who was Mr. Baker's secretary, and he was involved in a case in other means,

and I decided that it would be better for me to retain my own counsel so that there would be no conflict.

Q Well, what I was really driving at, Mr. Bromley, did someone recommend Mr. Sandground to you?

A Yes.

Q Who was that?

A Margaret Broom.

Q Had you known Mr. Sandground previously?

A No, I had not.

Q I see. Now, when was the first time that you ever met Mr. Sandground?

A When I went to his office on either the first or second of February.

Q 1965?

A '65.

Q I see. This is prior to your appearance before the Grand Jury, is that correct?

A Yes, that is correct.

Q Just so we are clear on this, you had previously appeared before a Grand Jury on the Bobby Eaker matter is that correct?

A I had, sir.

Q When was that?



A I believe it was October of '64.

Q Now, prior to going to Mr. Sandground, had you talked with any representative of the Department of Justice with respect to your -- and I hope this is a fair word -- problem?

A Would you repeat the question.

Q Prior to going to retain Mr. Sandground, had you talked with anyone in the Department of Justice anyone at all concerning your problems?

A Not concerning my problems. I had been interviewed by an FBI agent sometime earlier.

Q Roughly when was that?

A This again would be in the late summer of '64.

Q Just one interview?

A Actually one interview to the best of my recollection. They came once and we did not discuss the matter, but we did at a later date.

Q Had you talked to anyone in the Department of Justice other than an FBI agent?

A I don't recall talking to anyone.

Q At that time that you retained Mr. Sandground, were you acquainted with the fact that he was a classmate of Mr. Willens?

THE COURT: I don't see what difference that makes.

THE WITNESS: In fact, I am not sure who Mr. Willen is.

BY MR. MORGAN:

Q All right. now, you retained Mr. Sandground, and I suppose you related to him your legal problems, is that correct?

A I did, sir.

Q And, having done that, what if anything happened?

A Well, we went into my legal problems in great detail. As I recall he thought it over for a day or so and then I think that he had an initial meeting with Mr. Bittman and Mr. Moore, and this was in regard to the Grand Jury appearance which I had already been subpoenaed.

Q Now, in your discussions with Mr. Sandground, you related your problems. Did he discuss those problems with you at the time he went to see Mr. Bittman?

A Certainly.

Q Mr. Mr. Sandground make any suggestions to you as to what course of action you should take based upon the problems that you had confronting you?

A Well, it was advised that I should cooperate with the government and should go and testify to all questions asked.

Q And, as you understood it, Mr. Bromley, was that advice occasioned by reason of the seriousness of the problems confronting you?

A Well, it was my understanding that he did not think that I personally had any problems and therefore it was for me to do anything other than go before the Grand Jury and answer their questions.

Q Did Mr. Sandground at no time relate to you a discussion that he had with attorney's in the Department of Justice concerning what your problems were?

THE COURT: Put it this way. After he went to see Mr. Bittman the first time, what did he tell you when he came back?

THE WITNESS: Your Honor, I don't remember exactly what he told me. He reiterated his previous decision that to the best of his knowledge I personally was not in any jeopardy myself, and I should just answer the questions that were asked me.

THE COURT: You mean he told you that he had confirmed at the Department of Justice that you were not in any difficulty yourself?

THE WITNESS: No, sir. He didn't put it that way.

THE COURT: What did he say?

THE WITNESS: Well, he told me he had discussed with them and that it was -- he didn't tell me their conversation, but he did tell me that it was still his opinion that I should testify before the Grand Jury.

THE COURT: Did he tell you what Mr. Bittman had said to him?

THE WITNESS: I don't recall, sir.

THE COURT: Did you understand that you weren't going to be indicted from that point on?

THE WITNESS: No, sir. I didn't.

THE COURT: I thought you said you understood you didn't have any problems.

THE WITNESS: I understood it was his -- I am not leaving the impression that he had gone there and had gotten some type of arrangement made that if I were to testify that I personally would not be indicted.

THE COURT: What did he tell you?

THE WITNESS: He did tell me that he was still of the opinion that it would be to my best interest to go ahead and testify. I had already been subpoenaed. Other than that I could have done only one of three things. I could have either taken the Fifth Amendment.

THE COURT: Which you had done before.

THE WITNESS: Which I had done before the Senate Rules Committee.

THE COURT: Or you could testify?

THE WITNESS: Or testify or the other was to commit perjury which I didn't do.

THE COURT: What did he tell you that made you testify and take a different position than you had taken previously. Previously you had taken the Fifth Amendment.

THE WITNESS: Yes, sir. He told me in his opinion I was in error in doing that and he thought I should testify this time. He didn't give me all the reasons, or at least I don't recall all the reasons he gave me, sir, but I accepted his advice.

THE COURT: Okay.

BY MR. MORGAN:

Q Mr. Bromely, you did appear before the Grand Jury in February, is that right?

A I did.

Q Do you remember the date upon which you appeared?

A I believe it was the 23rd, or 24th or 25th or something like that. It was the latter part of the month.

Q I would assume you were interrogated concerning many matters relating to the Baker case, is that correct?

A I was.

Q Confining myself completely to Mr. Clifford Jones, did you testify before the Grand Jury in February concerning your relationship with Mr. Jones, First Western Financial Corporation?

MR. LYNCH: Your Honor, I object to that. We are getting now into an area that it seems to me is pretty far removed from whether or not Mr. Bromley was a voluntary subject -- voluntarily subjected himself to the situation and the overhearings that he has testified to. What does the content of the Grand Jury testimony have to do with whether or not he voluntarily consented?

THE COURT: He hasn't been asked as to what he said. From that point, Mr. Lynch, I have some reservations, and I have already indicated, but I think Mr. Morgan can at least develop whether or not the subject matter of the Jones in relation with Jones was part of the subject matter of his testimony at that time.

I have reservations about going into details of the testimony. Mr. Morgan has asked for the Grand Jury transcript and that matter is floating at this point. I will let the witness indicate whether or not by general response he was questioned and gave testimony

concerning his relations with Mr. Jones.

BY MR. MORGAN:

Q Your response, sir.

A To the best of my recollection, I was asked about all of my relationships with Mr. Baker which naturally would include Mr. Jones and First Western transactions.

Q That was during your February appearance before the Grand Jury?

A To the best of my recollection, yes.

Q Now, there came a time when you were mindful that Mr. Jones had appeared before the Grand Jury, is that correct?

A Yes, that is correct.

Q And, that intelligence came to you first from whom?

A From a Mrs. Dee Kaufman.

Q And, I would like for you to state for our record what Miss Kaufman told you.

MR. LYNCH: I object.

MR. MORGAN: I think it is material, your honor.

THE COURT: What is the basis of the objection?

MR. LYNCH: What does the -- what issue does the

conversation between Mrs. Kaufman and Mr. Bromley go to that is before the Court for this hearing?

THE COURT: The Court is aware that you went into it in detail and you developed it in detail with another witness, in which you questioned Mr. Moore at length and did not object to cross examination with respect to this entire conversation.

And, I take it that this is a preliminary to the various developments that occurred in wiring this man for sound and sending him West on an airplane, so I can't see why it is irrelevant or immaterial. We go here to the course of events that you have already laid out in this courtroom in great detail. So, I don't understand your objection.

MR. LYNCH: Your Honor --

THE COURT: You took this chain of events and described just what activated the Government and just what they heard either from this witness or Mr. Sanground about each of these events.

MR. LYNCH: Yes, but that went to the question of what Mr. Moore was thinking about during the period of time that he was directing or being involved in the overhearings that are before the Court.



THE COURT: But, the Court has before it the question of Mr. Moore's credibility.

MR. LYNCH: Well, --

THE COURT: Therefore, if this man now gives a different version of that conversation and the events that activated the government, wouldn't that be relevant and material?

MR. LYNCH: I don't think it would reflect necessarily on Mr. Moore's credibility since Mr. Moore testified he got this through Bittman and through Sandground?

THE COURT: I use credibility not in a disparaging sense, but since most of his testimony is hearsay, I can use reliability, perhaps. I don't mean there was necessarily any conscious falsehood, but your chief witness has testified again and again about conversation he had with somebody who had conversation with somebody else who reportedly had conversation with somebody else.

MR. LYNCH: As you know, your Honor, it involves a great deal of loss in translation through several people.

THE COURT: It may improve or become less effective in translation. I don't know.

MR. LYNCH: My objection was that the same foundation that would make the conversation between Bittman

and Moore relating to the Bee Kaufman contact significant from Moore's testimony and Moore's state of mind and what Moore did and the reasonableness thereof is not necessarily the same issue that is to be explored with this witness which is voluntariness and consent.

THE COURT: Well, now, I have indicated one basis on which it seems to me relevant and material, again within limits. I am trying not to let Mr. Morgan use this as a discovery technique. I made that comment several times, but is it not relevant and material, perhaps highly relevant and material in what capacity this man was acting.

This man may have had such a degree of relations with the United States that he was clearly an agent of the United States. I must say that the testimony so far tends to take the Court in that direction and at some point, how does the Court on this kind of a motion differentiate between what this man did and what the Government did.

MR. LYNCH: I don't think the Court need necessarily distinguish.

THE COURT: Well, if the Government had done it, it would be all over. The motion would be granted forthwith.

MR. LYNCH: If an agent had been approached in the same fashion and had undertaken to listen to conversation along the same way and line that they did, we would be arguing the same law here, as far as the government is concerned that these are legal under the law as it existed then and they are legal under the laws that exist now under the Supreme decision.

THE COURT: I think in the capacity of which Mr. Bromley was acting is a relevant consideration particularly where a chain of events has been shown.

This is not a casual one overhearing. Nothing could be less casual than a wiring of a man for sound and shipping him West and I think it is pertinent to determine what were the motivating factors in his conduct, because there is certainly a basis for suppression here if this was not simply a casual overhearing, assuming that the law hasn't changed, but that this was an induced governmental sponsored quasi entrapment technique where there was a predetermination by the government as to the outcome.

THE COURT: And, I think Mr. Bromley's capacity and his relationships of what he said is all pertinent, particularly since you opened it up.

MR. LYNCH: On the issue of entrapment rather

than the issue of voluntariness, because any conversation -- I don't see how any conversation he had with Dee Kaufman could effect on the one issue, the voluntariness --

THE COURT: I have to take it as a chain, after he had this conversation. He then gets further embroiled with other conversations with the government.

It isn't just an isolated event. Once he gets embroiled with the government and then the conditions under which he acted, it seems to the Court it is material. I am going to permit it within limits.

We will adjourn until 1:45.

(The lunch recess was taken.)

## AFTERNOON SESSION

1:45 p.m.

MR. LYNCH: Your Honor, preliminarily, may I take up a matter of scheduling?

THE COURT: Certainly.

MR. LYNCH: Mr. Sandground, who is going to be offered as a witness for the Government, was on the West Coast yesterday. I understand he took the Red Eye Special from Los Angeles last night and he got in this morning at 11 o'clock. He has an appearance in Alexandria Court tomorrow morning at 10 o'clock, and I have a scheduling problem.

I have Mr. Bromley this afternoon and then I will have Mr. Taylor available. But then I was going to offer Mr. Sandground who may not be available until tomorrow after his court appearance.

THE COURT: Is he going to be there all day?

MR. LYNCH: I don't know how long it is going to take. Oh, no, he is not going to take all day. He is just going to be there in the morning, but he doesn't know whether he will get out at 11 or 11:30.

THE COURT: If we find that we get through and have a little longer lunch hour, I don't imagine anybody is going to be too upset about that. I know I won't be. I

don't imagine you will be, Mr. Morgan.

MR. MORGAN: To accommodate Mr. Lynch, I might add this observation, Your Honor: We are getting daily copy of the transcript. I think if, at some juncture, I could have a gap of a couple of hours to read the transcript to see the extent to which I feel I have developed points I want to develop, I may be able to save a lot of time.

THE COURT: We will just go along and if you break down that way, Mr. Lynch, fine.

I am anxious to complete these proceedings by Thursday night. I have, I find, the usual Friday difficulties that we have here in this Court with motions and sentences. I would like very much to complete it, including testimony of anyone to be offered by Mr. Morgan by Thursday.

MR. LYNCH: I was about to suggest, Your Honor, if we have a gap, perhaps Mr. Morgan can put some witnesses on out of turn.

THE COURT: Let's just go and play it by ear. I understand your situation. You will tell Sandground that I expect him here the moment he gets out of that Court.

MR. LYNCH: All right.

THE COURT: Incidentally, on that, we ought to clarify with this witness whether there is any question of

Mr. Sandground's privilege.

MR. LYNCH: Your Honor, I think it is the witness's privilege.

THE COURT: That is why I said we ought to clarify it with this witness.

MR. MORGAN: I contemplated asking him that.

THE COURT: All right.

Whereupon,

WAYNE L. BROMLEY

the witness on the stand at time of recess, resumed the stand and testified further as follows:

CROSS-EXAMINATION (Continued)

BY MR. MORGAN:

Q I might just as well take care of that now. Mr. Bromley, you are acquainted with the fact, I suppose, that Mr. Sandground is going to appear as a witness in this case?

A Yes, sir.

Q Do you waive your privilege where he is concerned and do you have any objection to his testifying?

A No. I have already discussed this with Mr. Sandground and I do waive the privilege.

Q All right, fine. I believe, Mr. Bromley, at the conclusion of the morning session there was a pending question.

What did Miss Kaufman tell you?

A Well, when Miss Kaufman and I met, she told me that she had seen Mr. Jones while he was in town appearing before the Grand Jury and that he had asked her to get in touch with me and that our conversation was to the effect that he had asked that I be informed that he had testified to the fact that he had retained me as his Washington counsel.

Q When you say his --

A Mr. Jones.

Q You mean him personally?

A Yes. That is the best of my recollection.

Q All right. Go ahead.

A And that he had further testified that he was unaware of any money transactions between Mr. Baker and myself. And that was basically it, I would say, the gist of the conversation.

Q Miss Kaufman was relating to you what Mr. Jones had asked that she tell you? Is that correct?

A Yes, that is correct.

Q Would Mr. Jones have recognized Miss Kaufman as a mutual friend of both of you?

A I would imagine so. Pardon me. I actually don't know what really did transpire between Mr. Jones and Miss



Kaufman.

Q I withdraw the question. It isn't important any way.

Some reference has been made to where this conversation occurred. To move along, it occurred, I guess --

A In the cocktail lounge of the Carlton Hotel.

Q And Miss Kaufman worked there, was a secretary for Mr. Black in his office upstairs? Is that correct?

A Yes, sir; that is correct.

Q Moving along, Mr. Bromley -- Incidentally, did you report this conversation with Mrs. Kaufman to anyone at the Justice Department?

A I reported it to Mr. Sandground.

Q Substantially as you have testified this morning?

A Substantially, yes.

Q The question has been raised in this proceeding, Mr. Bromley, and I want to ask it categorically. Did you have any fear of physical reprisals against you by Mr. Jones?

A No, I personally did not.

Q Now moving along in point of time, specifically to March 23, did you receive a call from Mr. Clifford Jones? A telephone call?

A The 23rd? I believe I received it on the 22nd, sir.

Q All right, I stand corrected. That is right. At approximately what time was that call received by you?

A In the vicinity of 9 o'clock in the evening.

Q And you were at your home at the time the call was made?

A Yes, sir.

Q State to the best of your recollection, Mr. Bromley, the substance of that conversation?

A Well, apparently -- The subject of my conversation was Miss Kaufman. Mr. Jones had had occasion to talk either with her or with the office and if I may also add a little bit more to one of your previous questions -- At the time I did meet Miss Kaufman I expressed the thought that it would have been a lot better if he had talked with me personally.

And then later on Monday, the 22nd, he did call. At that time he essentially said approximately what I have already stated that Miss Kaufman had told me.

THE COURT: Did you tell Miss Kaufman that you had been before the Grand Jury?

MR. LYNCH: I am sorry, Your Honor. I didn't hear that question.

THE COURT: I asked him whether he told Miss Kaufman that he had been before the Grand Jury.

THE WITNESS: Your Honor, I don't recall whether or not that even came up. I just don't recall, sir.

THE COURT: Did she give anything to indicate that she knew you had been?

THE WITNESS: Not that I recall, sir.

THE COURT: You don't know whether your appearance before the Grand Jury was discussed with her or not, then?

THE WITNESS: To the best of my recollection, it was not. I just don't recall whether or not she discussed my appearance or not.

MR. MORGAN: May I proceed, Your Honor?

THE COURT: Yes.

BY MR. MORGAN:

Q Backing up a bit and correct me if I am wrong, your testimony is that when Mr. Jones called you on the evening of March 22, 1965, that the substance of the conversation was essentially what he had told Miss Kaufman? Is that right?

A Yes. I believe -- as I said -- that he said <sup>1</sup> had been retained to represent him, that he was unaware of any transactions between Mr. Baker and myself. I believe we also discussed the place at which we had originally made the arrangement.

Mr. Jones did most of the talking and he stated that he

had testified that we had made the arrangement at the Capitol Building here in Washington.

Q That is in the first conversation that evening?  
Is that right?

A I believe so, sir.

Q Anything else?

A Mr. Morgan, I just don't recall any specific details. If you would like to refresh my memory --

Q So far as your present testimony is concerned, that is the best you can remember? Is that right?

THE COURT: That is what he says.

MR. MORGAN: All right. Let's pass along.

BY MR. MORGAN:

Q All right, what happened then?

A After talking with him I called Mr. Sandground and told him of my conversation with Mr. Jones and it was a very short conversation. So he said he would call me back in a few minutes.

Q And what did you tell Mr. Sandground?

A At the time that I talked with him?

Q Yes. When you called Mr. Sandground, what did you tell him?

A As I just said, I stated I had received this call

from Mr. Jones and the substance of it, and that the conversation or the statements that Mr. Jones had made over the phone were completely in conflict to my recollection.

Q All right, then what happened?

A Well, as I said, he said he would call me back in a few minutes, and we hung up. After a period of time, he did call back. This again was -- This was a very short conversation. He said that he would be over to my house in about an hour or so.

Q Mr. Sandground said that he would?

A Yes.

Q Did he indicate that he had been in touch with representatives of the Department of Justice?

A It was my impression that he had talked with them, but I was not under -- Rather, I was not aware that they were going to come with him.

THE COURT: Did you authorize him to talk to the Department of Justice when you called him initially?

THE WITNESS: I don't recall whether I specifically authorized him, Your Honor.

THE COURT: Either you did or you didn't.

THE WITNESS: I could have implied that I authorized him. I knew that he had been in touch with them, but as

to whether or not I gave him direct authorization to at that time talk to the Department of Justice, I don't recall.

THE COURT: But he was your lawyer, sir.

THE WITNESS: No. That is the reason I say that. I had retained him and was following his advice and I --

THE COURT: So you would say he acted on his own initiative in going to the Department of Justice?

THE WITNESS: I think this is his own initiative, but, as I say, this was perhaps implied authority to do so. I have never questioned any of his previous acts, so saw no reason to be concerned about this time.

BY MR. MORGAN:

Q So Mr. Sandground called back and said he was coming over and didn't indicate that he was bringing with him representatives of the Department of Justice?

A Not that I recall. He could have said "we" as well as saying "I". I just don't recall which pronoun he used.

Q When you had called Mr. Sandground on this occasion, were you disturbed?

A In what way, Mr. Morgan?

Q Any way.

A Well, say rather than disturbed I was surprised.

As I say, I did not recall the facts as Mr. Jones had stated them over the phone. I was not calling him to raise any great disturbance.

THE COURT: You weren't complaining about anything?

THE WITNESS: No, sir. But after all he was my attorney.

BY MR. MORGAN:

Q You ought to let him know?

A I was keeping him apprised of all developments.

Q As a matter of fact, this was essentially what you had already relayed to him that Dee Kaufman had told you? Isn't that right?

A Yes, but it was in more detail.

Q I would like to ask this question, Mr. Bromley: You mentioned Mr. Jones saying that he had retained you as his attorney. Are you seriously saying that you construed that as Mr. Jones saying to you that this employment about which there is a long record at First Western was not the employment he was talking about? In other words --

A To answer your question, Mr. Morgan, I got the impression that he was telling me that he had told the Grand Jury that he had retained me personally to represent him in Washington. I knew --

Q You mean apart from your being retained by First Financial?

MR. LYNCH: Objection, Your Honor. There is nothing in the record that will reflect that Mr. Bromley was actually retained by First Western.

THE COURT: Let's ask him.

Were you retained by First Western?

THE WITNESS: I never considered myself retained by them, sir; no.

BY MR. MORGAN:

Q Did you submit invoices to First Western?

MR. LYNCH: Your Honor, I object.

MR. MORGAN: He can't have it both ways.

THE COURT: I don't want both of you gentlemen to engage in colloquy.

MR. LYNCH: I was objecting to you, Your Honor.

THE COURT: What is your objection?

MR. LYNCH: We are getting into the substance of the matter at issue in the trial here. That is to say, whether or not this was a sham arrangement that Mr. Jones had set up with Mr. Baker and Mr. Bromley for the submission of invoices to be paid and the money paid to Mr. Baker.

THE COURT: We are not going to try that, Mr. Lynch.



But the witness testified, if I followed his testimony correctly, that Mr. Jones called him and that he, Mr. Jones, said that he had retained Mr. Bromley.

MR. LYNCH: He did, that is what he told the Grand Jury.

THE COURT: Then Mr. Morgan asked, "Did he say personally." And Mr. Bromley said, "Yes."

Now as I understand what Mr. Morgan is asking is: By personally -- I am not going into all of the ramifications of this case now -- did he mean personally retained him on behalf of corporations with which he was connected, or any or them, or personally retained him as an individual for his private personal counsel.

MR. MORGAN: That is right.

THE COURT: I think to the extent it goes to the conversations that initiated the entire wire surveillance, electronic surveillance, the precise nature of that conversation is relevant. But I don't want to go into all of the other things.

MR. MORGAN: I don't contemplate doing so, sir.

THE COURT: I will let him inquire as to what he meant by personally.

MR. LYNCH: I submit this witness can't tell what Mr. Jones means when he said he retained him.

THE COURT: If he adopts your comments and says he can't, that is the end of it.

BY MR. MORGAN:

Q Mr. Bromley, you made reference to an observation attributed to Mr. Jones about having testified that he hired you as his attorney. Did you construe him to be saying that he had testified that he had hired you personally as his attorney?

THE COURT: In other words, as his individual lawyer.

THE WITNESS: No, sir. Well -- Your Honor, I did not know at the time and still do not know Mr. Jones's exact connection with First Western. And I assumed that it meant that I was representing him.

THE COURT: Personally?

THE WITNESS: Personally, as far as perhaps savings and loan matters were concerned.

THE COURT: Yes. And that is what you advised Mr. Sandground when you telephone Mr. Sandground?

THE WITNESS: It is, Your Honor.

THE COURT: All right. I think that is as far as you can go on that, Mr. Morgan.

MR. MORGAN: I think there was good occasion for

him to be surprised, if that was his construction.

BY MR. MORGAN:

Q By the way, when you concluded your conversation with Mr. Jones on the occasion of his having called you, was there any understanding or arrangement that you would call him back?

A I don't believe so, sir. I just don't know.

Q As a matter of fact, you didn't even get his phone number, did you? You had to run him down through the Thunderbird Hotel subsequently? Isn't that right?

A Yes, sir.

Q Did you tell him in that first conversation that you had guests and couldn't talk freely?

A I did.

Q Did you have guests?

A Mr. Morgan, I just don't recall.

Q How does it happen, Mr. Bromley, you remember telling him that you had guests and now you don't remember whether you had any guests?

MR. LYNCH: Your Honor, I object.

THE COURT: On what grounds do you object?

MR. LYNCH: It is argument, Your Honor. He is arguing with the witness.

THE COURT: He is under cross-examination, Mr. Lynch.

THE WITNESS: I don't know how it comes I remember one thing and not the other, but I happen to.

BY MR. MORGAN:

Q All right. So there came a time when Mr. Sandground appeared at your home on the evening of March 22, 1965, is that not correct?

A Yes, sir.

Q Was he accompanied by anyone?

A He was.

Q Who were with him?

A Mr. Bittman, Mr. Moore, a court reporter, and another gentlemen. No, I am wrong. I believe just the three of them.

Q Now they entered your home, and what was the conversation thereafter?

A We discussed the phone call I had had with Mr. Jones.

Q When you say "we", that was the discussion among whom?

A That was the discussion between Mr. Sandground, Mr. Bittman, Mr. Moore, and myself. We discussed the phone call and, as I recall, Mr. Sandground and I went into a different room and so on. And we discussed the possibility that because --

Q Wait, before you got to the other room. What was the discussion when the four of you were talking?

A Well, I was asked questions pertaining to the conversation with Mr. Jones. I don't recall the specific questions, nor my specific answers, but it was just in that general area.

Q Did you inquire who the young lady was they had with them?

A I am sure I must have.

Q Did you know that she was a court reporter when they came in? Was she introduced as such?

A If she wasn't introduced as such as she came through the door, she was shortly thereafter.

Q I would like if you can, Mr. Bromley, and if you don't remember you don't remember, of course, but can you tell me anything that was said in the conversation among you, Mr. Bittman, Mr. Moore, and Mr. Sandground?

A Nothing other than what I have already stated. We just discussed the conversation.

THE COURT: You just repeated what you have testified to here about the conversation and nothing else?

THE WITNESS: Yes, sir.

BY MR. MORGAN:

Q And then you say that you and Mr. Sandground retired to the bedroom? Is that right?

A To another room; yes, sir.

Q What was that discussion?

A Well, we continued to discuss the earlier phone call from Mr. Jones. We discussed the fact that it was so contrary to the facts as I knew them that the thought came up as to perhaps whether our other conversation might have been monitored.

THE COURT: What other conversation?

BY MR. MORGAN:

Q You are talking now, are you, about --

A I am talking on --

Q -- concern that the earlier call from Jones to you had been monitored?

A Yes, sir.

Q By whom?

A From Mr. Jones's end of the phone.

Q You mean you were concerned that Mr. Jones might have monitored the call?

A Yes.

Q Now go ahead. What else occurred in the bedroom?

A As I say, we discussed this, and therefore Mr. Sandground and I discussed my calling Mr. Jones back this time with the court reporter listening in and to discuss it in more detail as I recalled the facts.

Q Let's stop right here, Mr. Bromley. Had you said anything to Mr. Jones in that first conversation that would have given you concern had it been recorded?

A Yes, I believe so. Because if I had personally been retained by Mr. Jones or by the First Western, regardless of which one, then the payments that were sent here to Washington with the checks made out to me I think would have perhaps been income to me and therefore I would have turned in an incorrect tax return.

Q So you were concerned that it might have been recorded in light of a fear that if these moneys were not a conduit to Baker that you would be in trouble on taxes? Is that right?

A Yes, among other things. As I say, I did not know the facts to exist as he had described them over the phone. I had already testified and the Department of Justice was aware of the facts as I knew them to be. And there was a definite conflict between what I had told Mr. Sandground and the Department of Justice and what Mr. Jones had told

the Grand Jury.

THE COURT: When Mr. Jones called you on the first occasion and he said that he had retained you, did you tell him, "Why you certainly did not."

THE WITNESS: No, I did not, sir.

THE COURT: What did you tell him?

THE WITNESS: I didn't say much.

THE COURT: Did you tell him that you had?

THE WITNESS: Yes, sir. In fact --

THE COURT: You admitted that he was right on the first conversation? Just to sort of string him along?

THE WITNESS: I wasn't stringing him along, Your Honor. I just did not verbally disagree with him.

THE COURT: Did you verbally agree with him? I mean I don't understand.

THE WITNESS: Your Honor --

THE COURT: If he was making a statement to you that suggested on the basis of the facts you knew your income tax return was fraudulent, I would have thought you might have reacted to that in some manner.

THE WITNESS: That is the reason I called him back, Your Honor, was because I had not reacted on the first occasion.



THE COURT: Why not?

THE WITNESS: The reason he was calling me, as I understood it to be, was to tell me what he had testified to before the Grand Jury.

THE COURT: Right.

THE WITNESS: Therefor, there was no occasion for me to over the phone to say, "No, that is wrong. That is wrong." I just didn't object to it. I didn't object and tell him, "Cliff, you know you were wrong when you said that.

THE COURT: My question is: Why not?

THE WITNESS: I just don't recall, Your Honor. As I say, he was just telling me what he had testified to so therefor there was no reason to debate it. I was under the impression we both knew it was incorrect.

THE COURT: So your purpose in the second call was to put yours on record?

THE WITNESS: Yes, sir.

THE COURT: Did you deny it in the second call?

THE WITNESS: On the second call those matters that we did get into that we had on the first call, yes, Your Honor.

THE COURT: You may proceed.

BY MR. MORGAN:

Q I would like to move back a little now, Mr. Bromley, in point of time, to your retaining Mr. Sandground and relating some of your problems to him. Did you outline to Mr. Sandground the tax problem you had with respect to these payments that had been received?

A I outlined to Mr. Sandground absolutely everything, yes, sir, which would have included that.

Q I see. Did you explain to him that as these checks came in to you that you had turned the proceeds over to Baker?

A Yes, sir; that is correct.

Q And did Mr. Sandground advise you as to the only basis upon which that could be handled tax-wise and not involve you in difficulty?

A I don't recall our definite conversation.

Q Specifically, did or did not Mr. Sandground say to you, in substance and effect, "Mr. Bromley, the only way these payments can be handled the way that you did and avoid tax problems is on the theory that the payments <sup>were</sup> / as a conduit to Baker."

Is that not right?

MR. LYNCH: Your Honor, I object. Mr. Sandground was retained in February. Now we are talking about something

that happened --

THE COURT: I am a little confused by the question. Will you rephrase it.

MR. MORGAN: Your Honor, the point I am making -- and, of course, by making it I destroy my question -- is that Mr. Bromley was proceeding -- and I think correctly -- all along on the theory that he was in difficulty with his income taxes, if he could not sustain the proposition that these checks that came payable to him were, in fact, intended for Baker.

THE COURT: I think that is a matter of argument. He testified as far as he was advised by his counsel he was in no difficulty.

MR. MORGAN: Very well.

BY MR. MORGAN:

Q We are back in the bedroom, now, at your home. So it was decided to do what, Mr. Bromley?

A It was decided to call Mr. Jones and to have the court reporter listen in on the extension in the kitchen.

Q Now that decision was made by you and Mr. Sand-ground? Is that right? In the bedroom?

A Yes, sir.

Q When did you first apprise Mr. Bittman and Mr.

Moore that you were going to do that?

A Well, when we came out of the bedroom, or whichever room we were in.

Q What was their reaction to that announcement?

A I don't recall exactly what their reaction was. Apparently Mr. Sandground had already discussed the possibility of it with them before he came over or otherwise they wouldn't have brought the court reporter.

Q So now we get to the point of the conversation. Your main phone was where? In the bedroom, with an extension in the kitchen?

A They both ring. I don't know which is the main.

Q The private line you spoke about, it was in another room? Is that right?

A Yes, sir.

Q That is not involved in this whatsoever?

A No.

Q Who did you take to the kitchen now?

A Well, as I recall, in the kitchen was Mr. Moore and the court reporter, and I assume you mean when I was getting ready to make the call.

Q Yes.

A I think that I was in my bedroom, Mr. Sandground

was there with me, and I believe that Mr. Bittman was in the doorway.

Q Mr. Bittman was standing in the doorway of the bedroom?

A I believe so.

Q Mr. Moore was in the kitchen?

A That is correct.

Q And I believe it has already been testified that you made a modification on the phone so Mr. Jones couldn't hear the parties in the kitchen listening in?

A That is correct.

Q Removed the diaphragm?

A If that is what it is called.

Q All right. Did anyone listen to the conversation that you had with Mr. Jones other than yourself in the bedroom?

A I believe that Mr. Sandground heard part of the conversation. He was sitting right beside me and the phone was perhaps with the ear part upward as such.

Q In other words, you were keeping it away from your ear so he could hear and anybody else could hear? Mr. Bittman?

A I doubt if he heard it.

Q Mr. Bromley, were you seeking in anything that you said to Mr. Jones --

Let me put it this way: Was everything that you said to Mr. Jones in this conversation that you initiated at 12:15 in the morning the truth?

MR. LYNCH: Your Honor, I object. He is not getting into the content of these calls.

THE COURT: It is blatantly apparent it wasn't truthful. There is no question about it. He misrepresented to Jones. He said he had never been before the Grand Jury.

Who put you up to those conversations, Mr. Bromley? That is what I want to know.

THE WITNESS: I discussed -- Rather, I was advised by my counsel, Mr. Sandground, to make this call that we are discussing now to Mr. Jones to substantiate what I had already testified to, sir.

THE COURT: Did Mr. Sandground advise you to tell Mr. Jones that you hadn't been before the Grand Jury?

THE WITNESS: I don't recall him advising me to say that, sir.

THE COURT: Whose idea was that?

THE WITNESS: If anyone, it would have to be mine, sir.

THE COURT: Did you discuss what you were going to say in this conversation with Mr. Bittman or Mr. Moore?

THE WITNESS: I don't believe that we discussed what I was going to say, sir. I just don't recall.

THE COURT: Did you discuss what you were going to say with him or not, before you made the call?

THE WITNESS: The things that we discussed was the fact that I was going to call up and substantiate my other story.

THE COURT: And that was all you discussed? You didn't discuss any details of the conversation, before you made it?

THE WITNESS: I don't recall, Your Honor.

BY MR. MORGAN:

Q Mr. Bromley, I would like to ask you if a purpose in making this call was not to elicit, by trick, statements from Mr. Jones to embarrass him?

MR. LYNCH: Your Honor, I object.

THE COURT: Overruled.

THE WITNESS: No, that was not the purpose. As I say, it was not to elicit anything from Mr. Jones as such but was to substantiate myself.

BY MR. MORGAN:

Q Why did you find it necessary to tell Mr. Jones that you had not been before the Grand Jury and you wanted

to know how to handle yourself? Why did you tell him that which you knew and Mr. Bittman knew and Mr. Moore knew was untrue?

A I don't recall -- I do not recall absolutely whose idea it was. I don't know whether it was mine or Mr. Sandground's or what.

Q Or Mr. Bittman's or Mr. Moore's? You just don't know? Is that correct?

A The only thing I know are the conversations and I do not recall those in detail that you are asking for. I just do not recall it that clearly. But I do recall discussing it with Mr. Sandground. Now what he and Mr. Bittman and Mr. Moore said out of my presence I certainly wouldn't be aware of.

Q In the context of telling Mr. Jones that you had not been before the Grand Jury and you were concerned about it, did you make this statement to him in this conversation: "I haven't gotten any word from them, but I am sure I am going to have trouble with '63. If I do, I am going to have to get in touch with somebody."

Now were you soliciting Mr. Jones's reaction to helping you on that?

THE COURT: Now I will hear your objection.



MR. LYNCH: I object. We are going into the contents of the telephone call that was monitored. That has no bearing whatsoever on the issue that is before this Court as to this witness, whether or not he voluntarily --

THE COURT: Let's pause on that. The Court feels it does. I want to be sure that I am not mistaken and at least that you and I understand each other.

If this telephone conversation rises to the dignity of entrapment, it is out.

MR. LYNCH: Your Honor, entrapment as to what? This man is not being charged with obstruction of justice. He is being charged with perjury committed approximately a week or two before this telephone conversation took place.

THE COURT: But the testimony is that the purpose of Mr. Moore was to obtain corroborative evidence for a perjury indictment.

MR. LYNCH: One of the purposes was, Your Honor.

THE COURT: I don't understand how there can be any question but that if this was instigated by the Government --

MR. LYNCH: He was entrapped into committing perjury two weeks before?

THE COURT: He was entrapped into giving a

corroborating statement which is part of the essential elements of the offense. That is what I am wondering about. And what I want to know is: Why that isn't within the scope of this hearing.

MR. LYNCH: This is a motion to suppress based on the theory that either Mr. Bromley did not voluntarily consent to these overhearings and under Locke would somehow be subject to motion to suppress --

THE COURT: The practice in this Court is once a suppression hearing is started, Mr. Lynch, if there turns out to be some other constitutional involvement that the Government is discovered to be in, I am not going to put blinders on my eyes and go on a piece of pleading and pay no attention to something else that has just been coming out in pretty big letters in this hearing.

I think it is before me. Now if your position is that it is not technically raised and therefor it is not technically within the scope of the motion, Mr. Morgan will respond, "Well, I now amend my motion." Where are we? Isn't it proper to look at the circumstances here once?

If we go ahead with this motion limited simply to consent, which is what you are suggesting, then this matter would to all be heard again, if there is a jury in

the box, as to whether there was entrapment. As a practical, common sense matter of judicial administration, shouldn't we find out once and for all whether there were any improprieties?

If there aren't say so, and if there were determine what they are and their effect.

MR. LYNCH: Your Honor, I have difficulty with your concept of entrapment. As I understand entrapment under the Sherman case and the Sorrels case, it is where a defendant is persuaded by the creative activity of the Government to commit an offense.

The offense that is charged in this indictment took place two weeks before the telephone call that is in issue here, or a week before, a week and a half, two weeks, or whatever it was on March 17th. There could be no issue of entrapment into the offense with which this man is charged, since the offense took place before any activity of the Government took place here.

I submit an entrapment is not in issue in this case.

May I continue?

THE COURT: Yes, certainly.

MR. LYNCH: If we had charged here a 1503 violation,

an attempt to obstruct justice by, as someone put it, teaching a witness a story, suggesting that he conform to it, then there may be some issue of entrapment here.

That is not the charge lodged against this defendant.

THE COURT: You introduced evidence today that this was undertaken with the aid of the FBI under 18 U.S. Code 1503.

MR. LYNCH: That is correct, Your Honor. That was the charge that was being looked into.

THE COURT: That isn't perjury, is it?

MR. LYNCH: No, Your Honor, it is obstruction of justice.

But he is not charged with obstruction of justice that occurred at or about March 22, 23, 24, or 25. He is being charged with perjury on March 17.

THE COURT: It ended up he was not so charged. But the purpose of your investigation at the time was 18 U.S. Code 1503.

MR. LYNCH: One was.

THE COURT: That was the one you advised Mr. Hoover it was in the memorandum before the Court.

MR. LYNCH: Yes. And Mr. Moore also suggested

it was also in their minds they might get corroborative evidence as to the perjury.

THE COURT: You see, nothing in this testimony suggests that there may have been an effort here by the Government to induce Mr. Jones to try to tamper with a Grand Jury witness. That doesn't come through to you from any of this evidence.

I think that is our difficulty.

MR. LYNCH: Your Honor, it would be my difficulty, if we had charged that against Mr. Jones. We would be arguing whether or not what was done here did constitute entrapment. But that is not the charge lodged against Mr. Jones.

It is a charge of perjury that took place on March 17 before these overhearings took place.

THE COURT: That may be technically correct. I suppose in an entrapment you have to induce the unlawful act.

MR. LYNCH: That is correct, Your Honor.

THE COURT: But I am troubled. I probably make a mistake in trying to make clear too early to counsel what troubles me, because I haven't got any fix on it. But where you cannot convict Mr. Jones of perjury, assuming

that he did, which is for the jury to determine, without corroborative evidence, because you have to have corroborative evidence, and where you are inducing the circumstances to get the corroborative evidence, it seems to me the line between that and inducing the unlawful act may be a difference, a technical difference, but in the terms of rights of citizens is there any difference?

MR. LYNCH: It would be an application of the entrapment law.

THE COURT: I put you on notice that I am wondering about it, because it seems to the Court it is awfully close to inducing the act itself. I haven't read all the cases and I haven't studied all the law about it and I don't profess to be an expert.

MR. LYNCH: Nor do I, Your Honor.

THE COURT: But it does seem to me it is a peculiarly significant thing in a perjury case, because of the very special attributes of a perjury offense -- no man can be convicted of perjury where one says it is one way and the other says it is the other, as we all know.

To make the case, you induced the corroborative statement. And I think that is awfully close. So I want to look at some cases. On that basis, I am going to permit

the examination of Mr. Morgan.

BY MR. MORGAN:

Q Mr. Bromley, I am referring to this conversation that was recorded between you and Mr. Jones. You say, "Look, as I told you earlier I haven't actually been before the Grand Jury and I am wondering what I am going to say, if I am called."

Then you say after that, "I am getting right disturbed about it, because I haven't talked with our friend, and I just don't know how, you know, how this whole thing is going to be handled and it's really got me over the barrel."

Now in relating that to Mr. Jones, were you seeking Mr. Jones's come back? Were you trying to lead him on?

A I shouldn't think so. Naturally I now, here in August of 1968, cannot tell you clearly everything that was within my mind in March of 1965. But I wasn't trying to lead him on. I was just trying to, as I say, substantiate my own statements to the Department of Justice and a Grand Jury.

Q Then in the very next statement, Mr. Bromley -- Mr. Jones doesn't pick this one up and you say, "I normally run into trouble and I want to know how to handle this one."

A Say that again, sir?

Q "And I normally run into trouble and I want to know how to handle this one."

Were you seeking advice from Mr. Jones as to how to handle it? What were you seeking there?

A Oh, no. If I understand you correctly -- I don't have the advantage of having the transcript in front of me. If you happen to have a spare copy --

What page is it?

Q This is on page 7, beginning at line 9. That will help you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You can keep it during this examination, Mr. Bromley. I don't think it is appropriate to examine you about it without you having it in front of you.

THE WITNESS: Thank you.

What I believe we were discussing, there was the fact that of these checks that had been sent to me from First Western that I had cashed -- I had cashed -- Might I ask you a question before I answer this one, sir?

MR. MORGAN: Normally I would object, but go ahead. That is a fair deal.

THE WITNESS: I hope you will take into consideration the whole picture here which was not only was I getting



First Western checks, but I was also getting other checks as well. Of course, we are going out of the realm of this case.

THE COURT: What I am interested in is the inducing part, not other cases.

THE WITNESS: What I am saying, Your Honor, is there were checks, I am not sure all from First Western, that I endorsed and there were some I didn't endorse. At this particular time I wasn't sure exactly how many checks had had the name Wayne Bromley on it I had cashed.

What I think we were talking about at this point was that I was interested in the checks that I had received from First Western, because I did want to know which checks I had endorsed and frankly I also wanted to know how much money I had officially been paid.

THE COURT: Your testimony is that none of this was in any way designed to induce statements from Mr. Jones?

THE WITNESS: I wasn't attempting to -- No, sir. I had no intention to.

THE COURT: Very well.

BY MR. MORGAN:

Q On page 10, Mr. Bromley, if you will refer to this,

at line 9, you again say, "But I will tell you I am just naturally getting concerned, because I don't want to be left holding the bag here."

A That is right, sir.

Q Was that to get a response from Mr. Jones in some way?

A That was a statement of fact, Mr. Morgan. I did not want to be holding the bag, because I had no personal financial interest in this First Western transaction and I certainly did not want to be considered the recipient and the person who had retained the amount of money involved.

And that is what I meant by that.

Q In line 13 you say, "As you know, I am still the hind tit here and I don't want to stay there."

A That is right.

Q And, of course, Mr. Jones responds saying he will get the records relating to payments made to you back to you? Is that right?

A Yes.

THE COURT: He said he was not trying to induce any statements from Mr. Jones in any of this, Mr. Morgan.

MR. MORGAN: One more question, if Your Honor please.

BY MR. MORGAN:

Q Look at line 21, page 10, Mr. Bromley. You say, "I have been under subpoena six weeks or more and I don't know why I haven't been called." Well, you had been called before the Grand Jury, hadn't you?

A I had.

Q And you knew very well why you hadn't been called again, didn't you?

A Yes, because I testified.

Q And you were working with the Government at this time? Is that right?

A I was following my attorney's advice.

Q Right. So this is the second time --

THE COURT: That is apparent.

BY MR. MORGAN:

Q -- that you misrepresented this to Mr. Jones?  
Is that right?

THE COURT: That is apparent and he says he did that on his attorney's advice.

MR. MORGAN: Very well.

BY MR. MORGAN:

Q Mr. Bromley, did there come a subsequent time when arrangements were made for you to make some calls to

Mr. Jones?

A There did.

Q What brought that about?

A It became apparent or it came up that it might be a good idea for the three of us to get together. And the other calls -- the next day or so -- were -- Well, it was culminating our plan to meet.

Q Let me ask you this? This is the call made around midnight, the transcript of that that you have here, I believe?

A Yes.

Q Is that it?

A Yes.

Q Is it based on this call that you subsequently called Mr. Jones and Mr. Baker from Mr. Sandground's office?

A Would you mind repeating that question? I have to admit I was glancing at something.

Q I am referring to the several calls you made trying to reach Mr. Baker and Mr. Jones from Mr. Sandground's office. You are familiar with that?

A Yes.

Q Was this conversation the basis for your initiating those calls?

A It was probably this call and, in addition to that, I believe it was a call I received the next day from Mr. Jones.

Q Right. Exactly. Now when did you get that call?

A I think it was the evening of the 23rd, which would be the same calendar day as this. It was that evening.

Q And will you state the substance of the conversation that you had with Mr. Jones at that time?

THE COURT: What is the relevance or materiality of that? This is not an intercepted telephone call, is it?

MR. MORGAN: No, Your Honor, but presumptively the Government has indicated that conversation is the predicate for what it did.

THE COURT: I guess it is one of the predicates. All right, you may ask.

BY MR. MORGAN:

Q State the substance of that conversation, Mr. Bromley.

A It was to -- Well, as you know, naturally from your transcript here I guess what would perhaps be the first idea that we might possibly meet was on page 11 there. We didn't go into it in any great detail. We did the next evening over the phone. We discussed possible places,

rather the most convenient way for all of us to get together.

It turned out that Mr. Baker was already in California, that Mr. Jones planned to be there at the same time. And therefore it was decided, you know, for me to come out.

Q Was anything said in the conversation about your being broke and needing money to get there?

A That subject came up at one point. I am not sure whether it was exactly that conversation or not. But after all, I have not been the beneficiary of any of this transaction and I certainly did not intend to fly at my own expense out there.

Q So after this conversation, then what did you do?

A We are talking about the one of the evening of the 23rd?

Q Yes.

A Well, I either talked with Mr. Sandground that evening or the next morning. One or the other. I told him of our additional conversation.

Q You told him essentially what you have testified to here? Is that right?

A Yes, sir; that is correct.

Q What then happened?

A He asked me to come to his office and I did so.

And at that time we attempted to call Mr. Baker and I believe we also tried to call Mr. Jones back to -- I don't believe we got any calls through. Because of the time difference, I did not make contact.

Q Who were present?

A As I recall, there was Mr. Sandground, Mr. Bittman, Mr. Moore, and an agent of some sort.

Q How did Mr. Bittman and Mr. Moore get into this, as you understand it? Did you talk to them about your talk with Jones?

A I don't recall talking with them. I think Mr. Sandground talked with them.

Q So they appeared at Mr. Sandground's office? Is that correct?

A That is correct.

Q On the morning of the 24th? Or the 25th? Or do you remember?

A This would be the 24th, I believe -- wouldn't it?

THE COURT: Mr. Bromley, whose idea was it that you go out west, your idea, Mr. Sandground's, Mr. Bittman's? Whose idea was it?

THE WITNESS: As I recall, Your Honor, after these conversations and soon, the actual decision for me to go

out west was -- The decision was mine to go, but on the advice of Mr. Sandground.

THE COURT: Mr. Sandground urged you to go?

THE WITNESS: Advised me to go; yes, sir.

THE COURT: All right.

BY MR. MORGAN:

Q And so you did place these calls to Mr. Baker and to Mr. Jones? Is that right?

A That is correct.

Q Do you recall whether in your conversation, say, with Mr. Baker you stated that Mr. Jones wanted the three of you to get together? Do you remember that?

A I believe that is right. I believe so.

Q Do you remember in your conversation with Mr. Jones you said Mr. Baker wanted the three of you to get together? Do you remember that?

A No, I don't recall that.

Q In any event --

A Just a moment, Mr. Morgan. At which time did I say that?

Q I am asking you, sir.

A I might have --

Q You initiated the call --



A Wait a minute. I believe the last call I made to Mr. Jones from Washington I may have -- In fact, I believe I did say that. Because in my conversation with Mr. Baker he said he thought it would be a good idea. Therefore, it naturally implied that he wanted us to get together. So in that context you are perhaps right, sir.

Q We have the transcript. I won't belabor that further.

There came a time when you were equipped with some electronic devices? Is that correct?

A That is correct.

Q That was done, the mechanics of it, in Mr. Sand-ground's office? Is that correct?

A That is correct.

Q And that equipment was placed on you by whom, as you remember?

A By some agent. I don't know who he was, sir.

Q Who were present at the time that happened?

A Well, naturally there was the agent, Mr. Sand-ground, and myself. I just don't recall whether or not anyone else was there or not.

Q You don't remember whether Mr. Bittman was there?

A I don't recall.

THE COURT: It is clear as to who was there when this device was strapped to his stomach and he was put on a plane and went out west.

MR. MORGAN: Yes, Your Honor.

BY MR. MORGAN:

Q Did they explain how you used it, Mr. Bromley, at that time?

A Yes, sir; they did.

Q What did you understand that that unit would do?

A I understood that it was an electronic device which would pick up sound and that the main box part of it would perhaps be -- and I may be in error with my electrical definition, but was -- the transmitter as such and that the wire, the other part was the microphone.

Q What I am seeking to establish, you knew that that device would pick up a conversation near you and transmit it to someone else?

A Yes.

Q That much you did know?

A Yes.

Q That was activated in Mr. Sandground's office.

Did you wear this all the way to Los Angeles?

A I think I did. I don't recall.

Q You knew how to turn it on and off, I suppose?

A Yes. That is right. It is an on and off switch.

Q Do you remember turning it off?

A If I wore it out there, I certainly had it turned off.

Q And when was the first occasion that you reactivated it?

A I believe in my bedroom at the Beverly Rodeo.

Q I want to be sure I get this correct, Mr. Bromley. You met Mr. Baker at the Beverly Rodeo? Is that right?

A Yes, that is correct.

Q And I assume you had this activated while you were talking with Mr. Baker?

A I imagine I did.

THE COURT: But why?

THE WITNESS: Your Honor, I just do not recall whether I did or not.

THE COURT: Why would you activate it for Mr. Baker? I thought you were going out to get information on Mr. Jones.

THE WITNESS: Your Honor, it became -- the intent was that I have it on when I met with Mr. Jones. Now I do not recall at what point I was able to flip a switch, but

it was a rather uncomfortable device and you can't just suddenly loosen your belt and turn the switch on.

So I am not sure at exactly what point that evening I did. I know I just didn't keep it on continuously. I did not. But I just don't recall exactly when I did. If I did have it activated as I met Mr. Baker there, it was because we were leaving the lobby of the hotel and going over directly to a meeting with Mr. Jones.

Q Did Mr. Baker know you had this on?

A No, sir; he did not.

Q And would the same apply to Mr. Jones? He didn't know it either, did he?

A Right.

Q So you and Mr. Baker walked over to the Beverly Wilshire Hotel? Is that right?

A As I recall, we took a cab.

Q And I believe you said you were accompanied by a young lady? Is that right?

A Yes, that is right.

Q So the three of you went up to Mr. Jones's room?

A That is right.

Q I assume, knocked on the door, and entered? Is that right?

A That is right.

Q What was said upon entering that room, as you remember?

A I don't recall the exact conversation we had when I walked in.

Q But you did have this device working at that time? Is that correct?

A Yes, I did.

Q Were there any amenities at all? Did anyone say, "Hello, Cliff. Hello, Wayne. Hello, Bobby."

A Mr. Morgan, you know we had to say something to each other similar to that. Yes.

Q I assume that you had a brief conversation before you three gentlemen retired to the bedroom leaving the young lady in the living room? Isn't that right?

A Well, I am sure we didn't just meet, walk directly into the bedroom. It had to be at someone's suggestion. I do not recall who suggested it or what our exact conversation was.

Q How long was it before you retired to the bedroom after you entered the suite?

A Just a matter of a very few minutes.

Q But at any rate the gadget was on all that time?

A That is correct.

Q And you left the young lady in the living room, I suppose, so the three of you could, what, talk privately in the bedroom?

A Yes, talk without her --

Q What did you contemplate, Mr. Bromley, in light of your conversations with Mr. Sandground and in light of the fact that you were wired as you were, what did you contemplate your function was in that consideration?

A My function was to have this conversation corroborated by my own testimony and my function was there to do exactly this.

Q To corroborate your testimony?

A Right, sir.

Q Had there been any question raised about your testimony?

A There had been no question, as such, raised, but as you well know, I still might possibly have tax problems concerning these moneys that had come from First Western; if that were to have been treated as income to me, as such, by the Internal Revenue, I certainly would have been a few thousand dollars off.

Q I don't want to split hairs, Mr. Bromley, but I

recall your testimony to be originally that you had no problems.

Now are we to understand that you did have some problems?

A At that time I did not have any problems, because there had been no indictment come down, there had been no Internal Revenue investigation into my previous tax return. But this did substantiate both my tax and -- rather my tax return as well as my testimony.

Q Robert Baker was a life-long friend of yours, Mr. Bromley, isn't that correct?

A That is correct.

MR. LYNCH: Your Honor, I object.

THE COURT: Sustained. We are not going to try this lawsuit now, Mr. Morgan.

BY MR. MORGAN:

Q Mr. Bromley, after you concluded this conversation with Mr. Jones and Mr. Baker, did you and Mr. Jones then go anywhere?

A Yes. I have already testified that we took a cab and he dropped me off at the Beverly Hilton Hotel and I assume he went where he said he was going which was to the airport.

Q Mr. Baker and the young lady left? Is that right?

A That is correct.

Q Did you and Mr. Jones have a conversation in the suite, before you went down to get the cab?

A We had a very short conversation. We were -- rather, he was just about ready to leave. It was a matter of his, you know, the final assembling of his luggage and our leaving.

Q Did you have this on all the time the conversation went on?

A There, again, Mr. Morgan, I am not sure at what point in the evening I turned it off.

Q You have heretofore testified that that conversation lasted an hour, perhaps two hours? Is that right?

THE COURT: Yes, that is what he said.

BY MR. MORGAN:

Q Is that correct?

A Mr. Morgan, to the best of my recollection. I actually have no idea time-wise, you know.

Q And after Mr. Jones left you off at the Beverly Hilton Hotel, what was the next occasion you saw him?

A Who, Mr. Jones?

Q Yes.

A Right here.



Q Today?

A Yesterday.

Q You have not seen Mr. Jones since March of 1965?

Is that correct?

A No.

Q Mr. Bromley, I do want to ask this question: Have you been paid any sums of money by Mr. Sandground, by reference to your work with the Department in this case?

A No, I have not.

Q He has not paid you anything?

A He has not paid me anything. As I say, he did advance the price of the ticket. He and I did discuss this a week or so ago, and I believe at that time I think he said he thought he gave me \$100 or so. I just don't recall that at all.

I don't think -- And if he had, it would have been to reimburse my expenses out there.

Q And you have received no funds from any other person, to the best of your knowledge and belief, related to the work done in connection with this matter? Is that right?

A Other than I think the \$4 I received for appearing in the other case. A witness fee.

Q Thank you.

One question, Mr. Bromley: When the transmitter was activated in Mr. Sandground's office, you say it was put on at that time, was there any idea that it would be utilized for the purpose of monitoring your conversation with Mr. Baker at the airport?

A I don't think so.

Q That didn't come up?

A No, I don't think so.

MR. MORGAN: I believe that is all, Your Honor.

THE COURT: Mr. Bromley, when you went out west, did you consider yourself acting as a representative or on behalf of the Department of Justice?

THE WITNESS: No, sir; I considered I was acting on my own behalf, sir, that I was substantiating my own situation.

THE COURT: Then I fail to understand why you asked the Department of Justice to finance the trip.

THE WITNESS: I believe that Mr. Sandground had -- he and I discussed it and I said I had no intention of going any place at my own expense.

THE COURT: So unless the Government had paid your way, you wouldn't have gone?

THE WITNESS: That is correct, or unless Mr. Jones did. One or the other, but I was not going to bear the expense myself.

THE COURT: We will take a 10-minute recess.

(Short recess.)

Watson  
flg.  
Horning

MR. LYNCH: Your Honor, I have no questions of  
Mr. Bromley.

THE COURT: Very well, Mr. Bromley, you are ex-  
cused, sir. Thank you.

(Witness excused.)

MR. LYNCH: Mr. Taylor.

THE COURT: You are making good progress.

Mr. Lynch.

MR. LYNCH: I was hoping we would.

Whereupon --

B. FRANKLIN TAYLOR, Jr.

was called as a witness by the Government and, having been  
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LYNCH:

Q Will you state your name, sir.

A It is B. Franklin Taylor, Jr.

Q Mr. Taylor, what is your occupation?

A I am a lawyer, Department of Justice.

Q And how long have you been so employed, sir?

A Well, this stretch about six years. About six  
years before that, with a gap in between.

Q Mr. Taylor, I am going to refer you to a date of

March 26, 1965. Referring your attention to that date, where were you on the evening of that date?

A In Los Angeles.

Q When had you arrived there, if you can recall?

A Approximately 5:30 in the evening.

Q Of the same day?

A The same day.

Q How did you get there?

A By TWA from Friendship.

Q From the airport, where did you go?

A We went to -- I guess it was the Beverly Hilton Hotel.

Q What happened there?

A Well, we, Don Moore, myself, and a Narcotics Agent by the name of John Thompson, walked into the lobby, and waiting for us were the United States Attorney, Manny Real, and two Assistants, Bob Timlin and Bob Talcott.

Q Without giving us the substance, did you have a conversation with them there?

A Yes. Actually, we went up to one of the rooms in the hotel and we had a meeting there, those that I have mentioned, as well as a couple of other Narcotics Agents. two who had picked us up at the airport, Frank Briggs, and

Ted Heisig, and I think probably another one, Irv Lipshutz. We all gathered in the room and had a conversation.

Q Now, did you go anywhere from the Beverly Hilton?

A Yes. When our meeting ended -- it lasted, I suppose, perhaps forty minutes, three-quarters of an hour, or something like that -- we split into pairs and went to rooms that had been already reserved at other hotels.

Q Where did you go?

A I went to the Beverly Wilshire with Agent Frank Briggs, and also another agent, Irv Lipshutz.

Q Now, when you got to the room at the Beverly Wilshire, what if anything did you do?

A We made ourselves comfortable. We had this Kel Receiver which Briggs and Lipshutz busied themselves in getting set up.

Eventually, we ordered some food and we passed the time until we began picking up voices.

Q Now, when you picked up the voices, what did you do?

A I had yellow legal-sized paper and the best I could I tried to take down the conversations as they occurred.

Q Showing you, Mr. Taylor, Government Motion Exhibit

4, can you tell us what that is?

A This is a reproduction or a copy of the conversation that I heard after I had put it in this form from my notes.

Q Now, at the time you were taking the notes, where was the voice emanating from?

A More than one place, apparently, because initially we heard Wayne Bromley's voice and apparently from his hotel; and later on -- that was very very brief -- and then later on we heard his voice again and some background, and that was brief. And then still later, starting approximately ten o'clock or a few minutes after ten, we began to get what appeared to be a three-way conversation. And I assume that was at the Beverly Wilshire because I thought I heard Wayne Bromley say something to the effect: This is the Beverly Wilshire. I have heard of that place.

Q Now, what if anything was happening in the room while you were making these notes as to what you were overhearing?

A Nothing. The agents were doing the best they could to get the Kel Set, Kel Receiver to work efficiently. They had started the tape revolving, so we could tape the conversation, and, frankly, the reception was not all that

we would have liked it to have been, so they were from time to time trying to adjust the set or see what they could do to make it louder, so we could hear better.

THE COURT: The tape wasn't working at those times, is that what you are saying?

THE WITNESS: I didn't know that at the time, Your honor.

THE COURT: Is that the way it turned out?

THE WITNESS: That is the way it turned out. When we no longer heard the conversations, which was somewhere around eleven o'clock -- this lasted for about an hour, this three-way conversation -- we listened longer. Then about eleven-thirty or so, or somewhere between then and one-thirty, we checked the tape, tried to play it back, and we found that we got nothing on it. It had been revolving but it hadn't picked up.

BY MR. LYNCH:

Q Do you know why that was, Mr. Taylor?

A Not precisely, although about one-thirty, when we got a call from Don Moore, suggesting we rendezvous over at the Beverly Hilton, we did so. The two agents and myself and Bob Timlin, who was in the room above the one I was in, and an agent by the name of Dick Salme, who was with him, all those involved, rendezvoused -- I suppose



at this time it was probably around two in the morning, something of that order -- at Don Moore's room, and among the things we discussed was -- I suppose the agents did with John Thompson, who was the agent who came out from Washington -- why didn't the damn thing -- why didn't the tape work, why didn't it pick up, because they couldn't figure it out.

As I recall, it was some small thing like a little gadget that needed to be either inserted or a little connection that needed to be made, some minor adjustment that needed to be activated and they were not familiar with it. He could have shown them in three minutes if he had known they were not familiar with it.

Q In the meantime you had made these notes of what you overheard?

A] Yes.

Q Was that from a loudspeaker or did you have earphones or do you recall?

A As I recall, there was a speaker and that is what we relied on mostly. But when the conversation sort of faded out, we experimented with using some earphones. And I am not -- I recall they were rather small ones that fit into the holes in your ears, and we tried to see if that

would do any better. And I don't think it made -- as I recall it didn't make a great deal of difference. The reception was about as good one way as the other. We tried whatever means we could.

Q Are you aware, Mr. Taylor, that one of the machines was taping the conversation?

A Yes, I learned that the machine that John Thompson and I guess Don Moore were monitoring was taping because he knew how to work it.

Unfortunately, they were not as close to the locus of the conversation, so that that tape was not very good either, but at least it picked up whatever it was able to pick up.

Q Have you listened to that tape?

A Yes.

Q Now, how does the reception on the tape that you listened to compare to the reception that you were getting in your room when you were taking these notes?

MR. MORGAN: I don't understand. May I have it read back?

THE COURT: The question was, how was the reception on the tape that he did hear as compared to his notes.

MR. LYNCH: No, it was compared to what he heard

over his set in the room.

THE COURT: Yes. That would be what he had in his notes.

MR. LYNCH: Yes.

THE WITNESS: Well, the tape was inferior. In other words, I would infer that the set that John Thompson and Don Moore were monitoring over in the Beverly Hilton, I guess it was, that did have a tape that worked, did not pick up the conversation as well as our set did in the Beverly Wilshire. Had our tape been able to work, I am sure we would have had a far superior tape to the one they had because we were closer to the action and our reception was better.

THE COURT: Did you find material on the tape of Thompson's that was not in your notes? In other words, is that Exhibit 4 a composite of what you heard on Thompson's plus your notes or did you use Thompson's only to confirm your notes, I think is the question that all of us have in our minds.

MR. LYNCH: Yes.

THE WITNESS: No, Exhibit 4 is what I heard. As I recall, I heard things on Thompson's tape that I didn't have. In fact, I heard things that I don't have in my notes,

because I don't take shorthand and I couldn't get everything down that I would like to have gotten down.

So what is in my notes is what I could write while it was still fresh in my head and I missed things.

THE COURT: And you did not embellish your notes with anything you picked up on the Thompson tape?

THE WITNESS: No. I recall one thing I listened for on the Thompson tape, because I thought I heard -- and Timlin apparently didn't hear it, and it wasn't a particularly significant thing -- but it was a remark to the effect: Here's a little something for you. Or: Here's a little something just between you and I. That I heard Cliff Jones say to Wayne Bromley, and Timlin upstairs didn't pick it up. And I listened to the Thompson tape over and over and I talked myself into thinking that I heard it on that tape, but it was very faint.

MR. LYNCH: You may cross-examine.

MR. MORGAN: Just a couple of questions, Mr. Taylor.

#### CROSS EXAMINATION

BY MR. MORGAN:

Q Mr. Taylor, referring to Motion Exhibit 4, this conversation at the Beverly Wilshire covered a period of exactly

one hour, from 10:02 p.m. to 11:02 p.m.

A Yes.

THE COURT: Starting when?

MR. MORGAN: Starting at 10:02, Your Honor, and ending at 11:02.

THE COURT: No. 4?

MR. MORGAN: On Page 2.

THE COURT: It starts at 9:15.

MR. MORGAN: This is --

THE COURT: And then picked up again at 10:02.

Yes, I see it.

MR. MORGAN: The 9:15 part apparently --

THE WITNESS: You mean the three-way conversation.

MR. MORGAN: The Beverly Rodeo part is the first part.

THE COURT: I see what you are referring to.

BY MR. MORGAN:

Q I think you made it rather clear, Mr. Taylor, this does not purport to be the complete text of that conversation over a period of an hour, does it?

A No, I couldn't begin to -- I couldn't write that fast, nor could I hear everything they said. We would be straining and sometimes it would fade and come back or I

wasn't sure.

Q This represents, then, what you could hear and take down in longhand, is that right?

A Yes.

Q Now, this unit, it had a loudspeaker on it in addition to being a tape recorder?

A I haven't seen one since and I hadn't seen one before, but as I recall, it was a relatively small, like a rather slender briefcase size. It had a tape that revolved it had, I would say, either a little speaker that came up or a raised thing that had a grid, a speaker, and it also had a connection where you could plug in earphones.

Q Jacks and the unit?

A Yes, that is right. And as I say, we did try that.

Q It wasn't very clear to me. Did you use the jack device in making these notes or the loudspeaker or both?

A Both, but it is my recollection that it was considerably more with the speaker.

MR. MORGAN: No further questions.

MR. LYNCH: No further questions.

THE COURT: You are excused. Thank you, sir.

(Witness excused.)

MARK B. SANDGROUND

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

THE COURT: Did you get some sleep, Mr. Sandground,

after your trip on the Red Eye.

THE WITNESS: Yes, Your Honor, thank you.

DIRECT EXAMINATION

BY MR. LYNCH:

Q State your full name, sir.

A Mark B. Sandground, S-a-n-d-g-r-o-u-n-d.

Q What is your occupation, Mr. Sandground?

A I am an attorney.

Q Where do you practice?

A In the District of Columbia and in the Commonwealth of Virginia. My office is at 700 Colorado Building, 14th and G Street, Northwest. I am a partner in the law firm of Amran, A-m-r-a-n, Hahn, H-a-h-n, and Sundlun, S-u-n-d-l-u-n.

Q Were you a practicing attorney in February of 1965?

A Yes.

Q Do you know Wayne Bromley?

A Yes.

Q How do you know Wayne Bromley?

A I am his lawyer.

Q When did he retain you?

A The early days of February, 1965.

MR. LYNCH: May I ask a leading question,



Your Honor, so I won't get into a question of who did refer him?

MR. MORGAN: Don't stop now, Mr. Lynch.

THE COURT: I think that is fair comment.

BY MR. LYNCH:

Q Was Mr. Bromley referred to you by anyone connected with the Department of Justice, so far as you know?

A No.

Q Now, sometime after Mr. Bromley retained you, did you have any conversations with anyone relative to his situation?

A Yes.

Q And can you tell us with whom?

A With Bardyl, B-a-r-d-y-l, Rifat, R-i-f-a-t, Tirana, T-i-r-a-n-a, who was my law associate.

With Mr. William Bittman, B-i-t-t-m-a-n, who was an attorney at the Department of Justice, Mr. Donald Moore, Mr. Austin Mittler, and I believe those were the individuals I first spoke with.

Q Thereafter, what happened in so far as --

THE COURT: We haven't fixed a date for that conversation.

I take it that was at the Department of Justice.

When was it, Mr. Sandground?

THE WITNESS: I believe, Your Honor, it was February 5, 6, 7 and 8. There were more than one conversation.

At a later date I had a conversation with a man named Willens, Howard Willens, who was also at the Department of Justice, serving as the Assistant to Mr. Herbert Miller, who was the Assistant Attorney General of the Criminal Division.

THE COURT: That was after the 8th of February?

THE WITNESS: Yes, Your Honor.

BY MR. LYNCH:

Q Thereafter, did there come a time when Mr. Bromley accompanied you to the Department of Justice?

A Yes.

Q And when was that?

A About the 7th or 8th of February, 1965.

Q Now, at some point did you become aware that Mr. Bromley appeared before the grand jury in the District of Columbia?

A Yes.

Q And can you give us the approximate date of that?

A The reason Mr. Bromley came to me is that he had been subpoenaed to appear before the grand jury.

When he first came to my office, I believe it was the second day of February, 1965, he was holding a subpoena to appear before the grand jury. One of the first things I did was to get that continued by agreement, because he was to appear, I believe, within two or three days from the time he first contacted me, and I needed more time to prepare.

Q Did he eventually appear before the grand jury?

A Yes.

Q And do you remember when that was?

A No.

Q Thereafter, after the appearance before the grand jury, did you have further contact with Mr. Bromley relative to his appearance before the grand jury or the subject matter of his appearance before the grand jury?

A Yes.

Q And do you recall when that was?

A No. I was working with Mr. Bromley on an almost daily basis during the months of February and March. He

would call my office quite often. I can't recall every day that I spoke with him.

Q Referring you to the date of March 22, 1965, did you hear from Mr. Bromley on that date?

A I can't answer that because I don't remember; the date does not mean anything to me.

Q Was there an occasion when you received a call from Mr. Bromley in the evening, I believe at your home?

A Yes.

Q And did you have a conversation with him?

A Yes.

Q What did he tell you, substantially?

A He told me he had received a telephone call earlier in the day and he wanted to discuss it with me. He told me about the call.

Q What if anything did you do after you discussed this with him?

THE COURT: Was that a telephone call from Jones? Is that what we are talking about?

BY MR. LYNCH:

Q Was it from Jones?

A Yes. I put in a call to Mr. William Bittman and

spoke with him.

Q     Thereafter what if anything did you do?

A     I went to my automobile; I drove to Georgetown, where I parked my car across from the Seventh Precinct on Volta Street; I was picked up there in an automobile, driven by Mr. Moore, I believe, in which Mr. Bittman was a passenger, along with other people; and I went to Mr. Bromley's house in Bethesda.

Q     Was anyone else with you?

A     Yes.

Q     Who, if you recall?

A     A woman.

Q     And what was her occupation, if you know?

A     I thought she was a secretary at the Department of Justice. That is the way she was introduced to me.

Q     In any event, when you got to Mr. Bromley's house, did you have a conversation there?

A     Yes..

Q     And who was party to the conversation?

A     Mr. Bromley, Mr. Bittman, Mr. Moore.

Q     Now, at that time was it decided upon that Mr. Bromley would place a telephone call?

A Yes.

Q And to whom?

A Mr. Jones.

Q What if anything was going to be done in the course of that call?

A I don't understand your question.

Q Was anyone else going to be party to the call?

A Mr. Bittman or Mr. Moore or both were going to listen in on the receiver, to listen to what was going to be said.

Q How about the woman who was the secretary?

A She was going to have the phonepiece held to her ear so she could take down as a stenographer what was said.

Q Did you discuss this with Mr. Bromley before this was done, as his attorney?

A Yes.

Q Was this consented to by Mr. Bromley?

A Yes.

Q And by you as his attorney?

A Yes.

Q Thereafter, was the call placed?

A Yes.

Q How long did the call take, as best you can recollect, and what happened thereafter, if anything?

A The best I can recollect, it took some time. I didn't arrive until past ten. I know I was there until the early morning hours.

The best of my recollection, the call didn't come through until after midnight, Maryland time. The call was made, received, and taken down by the young lady.

We discussed it, had coffee, I was driven back to my car in Georgetown, I drove home.

Q Thereafter, were you in further contact with Mr. Bromley?

A Yes.

Q Do you remember when the next contact with Mr. Bromley was?

A It was on a daily basis.

Q Did he talk to you any further about calls from or to Los Angeles?

A Yes.

Q Do you remember when that was?

A No.

Q Well, was it within a week, within a month, within

days or within hours of the time of the events that you just testified to?

A I am sure it was within hours or days but I can't recall dates or times specifically.

Q Did there come a time when Mr. Bromley came to your office?

A Yes.

Q When thereafter?

A Very shortly.

Q Within a day or two?

A Yes.

Q Who was there besides Mr. Bromley?

A Mr. Moore, Mr. Bittman and a gentleman whom I don't know from the Department of Justice.

Q And what if anything was done in your office?

A A telephone call was made, and Mr. Moore and Mr. Bittman overheard that telephone call.

Q Well, was any device placed on the telephone?

A On the side of the phone where you listen, a cap was placed on, so that it was placed outside the phone, so that the conversation could be taken down, I believe, by a tape.



Q And was there a tape recorded in the room at the time?

A Yes.

Q To your knowledge, was the tape revolving?

A Yes.

Q So the conversations were taped?

A Yes.

Q Now, thereafter, did Mr. Bromley again come to your office?

A Yes.

Q And when was that?

A Mr. Bromley was at my office almost every day and I took at least one meal with him almost every day during this entire time.

I cannot truthfully tell you the very next time he came to my office.

Q Was it within a short time after the time the conversations were made from your office and taped?

A Yes.

Q And who was there at that time besides --

A I can't recall because I am not specific about the meeting you are referring to.

Q Well, let's go back. At the time that the conversations were taped, did you discuss this with Mr. Bromley before they were taped?

A Yes.

Q And did he consent to this arrangement?

A Yes.

Q And did you?

A Yes.

Q Within days thereafter, did Mr. Bromley again appear in your office when another person put some device on Mr. Bromley?

A Yes.

Q Do you know who that was?

A No.

Q Do you remember who was there at the time it was done?

A Yes. Mr. Bittman and either Mr. Mittler or Mr. Moore, and myself, and Mr. Bromley.

Q Now, did you discuss this with Mr. Bromley before this was done?

A Yes.

Q Was it consented to by you?

A Yes.

Q As his attorney?

A Yes.

Q And Mr. Bromley?

A Yes.

Q Thereafter, did you have occasion to travel to the West Coast?

A Yes.

Q With whom did you go?

A Mr. Bromley.

Q Were you aware that Mr. Bromley was going to engage in conversations that this device would transmit to receiving sets?

A Yes.

Q And were you aware people were going to be in the vicinity with receiving sets to receive these conversations?

A Yes.

Q Was that consented to by you?

A Yes.

Q And was that consented to by Mr. Bromley?

A Yes.

Q Where in Los Angeles did you stay, do you recall?

A The Beverly Hilton Hotel.

Q How long did you stay there, if you can recollect?

A I arrived at approximately seven-thirty California time; I took a taxicab to the hotel; I left on a limousine or taxicab the next morning to take a nine o'clock flight back to Dulles.

Q Who paid your expenses?

A The Government paid most of my expenses. They did not reimburse me for my total expenses, but they paid my transportation, my hotel bill, I believe \$5.00 or \$10.00 toward cabs, maybe a dollar or two on a per diem for breakfast.

I paid the rest out of my pocket and billed it to Mr. Bromley as a disbursement for representing him.

Q Other than the reimbursement to which you have adverted, were you paid any moneys by the United States Government?

A Of course not.

Q Or anyone representing the United States Government?

A Of course not.

Q Had anyone representing the Government made any promises to you for Mr. Bromley prior to this series of

events about which you have testified?

A No.

THE COURT: Well now, they did make some promises, didn't they? They promised they would pay his expenses, for example, if they weren't reimbursed.

I think that is an awfully broad question, Mr. Lynch.

BY MR. LYNCH:

Q Were any promises of immunity made to you for Mr. Bromley prior to any of these events?

A No.

MR. LYNCH: I have no further questions.

#### CROSS EXAMINATION

BY MR. MORGAN:

Q An initial question, Mr. Sandground.

You were present at or, I gather, a participant in the recording of telephone conversations between Mr. Bromley and Mr. Jones on three separate occasions: The one instance wherein it was recorded by a person you thought to be a secretary in the Department of Justice. Two other occasions, a recording in your office, in which an attachment was made to the telephone in your office, and

on another occasion wherein a radio transmitter was placed upon Mr. Bromley's person out in Los Angeles.

Did the question occur to you at any time, Mr. Sandground, that this might have been unlawful?

A No.

Q No question in your mind?

A No question.

Q I see.

I think this should be a fair question. Were you mindful of any laws or rules or regulations of the Federal Communications Commission bearing upon the lawfulness of this type of activity?

A No.

Q Referring to the first occasion upon which Mr. Bromley contacted you, did he come to your office?

A Yes.

Q And at that time I understand your testimony is he was under subpoena to appear before a grand jury in the District of Columbia, is that correct?

A Yes.

Q And did Mr. Bromley at any time or prior to any contact on your part with the Department of Justice outline

to you the basis upon which he was seeking your representation?

A In order to answer your question fully, sir, may I relate how he came to my office and for what purpose?

Q I would appreciate it, sir. Go right ahead.

A A few weeks before I represented a woman whose name at that time was Mrs. Margaret Broome, B-r-o-o-m-e, before the Senate Rules Committee hearing. She was --

Q May I interrupt? That was on the Baker investigation?

A On the Baker investigation.

Q Thank you.

A She was employed by Mr. Baker as his secretary for a period of time when she worked in the Senate.

I represented her at that hearing and then approximately two or three days later, she called me on the telephone and asked me whether she could refer to me a man named Wayne Bromley, whom she had known and who had previously testified before the Senate Rules Committee.

I accepted the referral and Mr. Bromley came to my office on, I believe, the second day of February, 1965, and we spoke for some time; and he told me that he had

been subpoenaed and showed me and brought with him a copy of the subpoena.

Q Were you mindful at that time, Mr. Sandground, that incident to Mr. Bromley's appearance before the Rules Committee that he had interposed his privilege under the Fifth Amendment and refused to testify?

A He told me that.

Q I see.

And you undertook to represent Mr. Bromley at that point?

A Yes.

Q I see.

A Actually, not at that point, no, sir. That is not an accurate statement. I wrote to him that day a letter for a retainer and I asked him to sign a written retainer agreement and to send me a check for a retainer.

That was done either twenty-four hours later or forty-eight hours later.

Q And he did send the retainer?

A Yes.

Q I see. All right. Thereupon you embarked on the representation of Mr. Bromley.



At what point did Mr. Bromley recount to you as an attorney and consult with you concerning his need for a lawyer?

A Briefly, the first day. On the day -- the next day or the day after, in great detail for periods of many hours.

Q Now, as a predicate to this, I would observe, as you may know, that Mr. Bromley has waived the privilege and you are permitted to testify.

What were the problems recounted to you by Mr. Bromley that occasioned his seeking your representation?

A He was --

MR. LYNCH: I think we ought to at least limit it to the area of the Jones' transactions. There are many other transactions, obviously, that Mr. Bromley was party to, and I don't see how any of the others could be relevant to this hearing.

THE COURT: Is it not relevant what his problems were vis-a-vis the Department of Justice? I am not interested in his problems otherwise, but his problems vis-a-vis the Department of Justice would appear to the Court to be within the proper scope of this inquiry.

He has testified himself about those matters.

MR. LYNCH: I agree, Your Honor.

THE COURT: I am not interested if he had extra-curricular problems of any kind. I am interested in his relations with the Department of Justice.

THE WITNESS: He had a problem --

THE COURT: You asked whether any promises were made, Mr. Lynch, and I think it is within the scope of the cross.

THE WITNESS: He had a problem about some tax matters on his income tax. He had a problem about possible perjury for testimony that he had given, statements he had made. He had problems about being involved in certain of the Baker transactions.

So I would say the areas were tax, perjury and the scope of the Baker investigation.

BY MR. MORGAN:

Q Now at this time, Mr. Bromley, I believe you testified, was under subpoena to appear before the grand jury, is that correct?

A Yes.

Q And you also stated, I believe, that --

THE COURT: He had appeared once, had he not, before

the grand jury?

THE WITNESS: Yes, prior to the time I represented him.

BY MR. MORGAN:

Q That was back in October of 1964 or thereabouts, is that right?

A Yes.

THE COURT: And it was as to that perjury the problem was on his mind, his prior appearance?

THE WITNESS: Yes.

BY MR. MORGAN:

Q After you had interviewed, consulted with Mr. Bromley, I believe you stated you thereafter contacted the Department with a view to deferring this appearance before the grand jury?

A Yes.

Q And whom did you contact?

A Mr. Donald Moore and Mr. William Bittman.

Q Were you directed to those gentlemen by anyone?

A I believe either one or both of their names appeared on the subpoena, typed in the bottom left-hand corner.

Q Well, I ask this for clarification, in the light of prior testimony.

Is it your testimony that you contacted Mr. Bittman and Mr. Moore before or after you talked to Mr. Willens?

A Before.

Q Before you talked to Mr. Willens?

A (Witness nods assent.)

Q Did there come a time when you talked to Mr. Willens about this case?

A Yes.

Q And what was the occasion for that?

A He asked to see me and asked me whether I would accompany Mr. Bromley to go to California, and I saw Mr. Willens in his office in the presence of Mr. Bittman and Mr. Moore.

Q Am I to understand that it is your testimony that the first time you discussed anything relating to Mr. Bromley with Mr. Willens was approximately March 26?

A That was the first time I discussed this case with Mr. Willens.

Q I see.

A Now, let me explain. I knew Mr. Willens since

1948. We were classmates at the University of Michigan, a period of 1948 to 1952. I knew both Mr. Willens and his wife, but I had seen him in the hall, said, hello, to him by his first name, but that was the first time we had ever discussed the case.

Q I see. Now, you arranged with Mr. Bittman and/or Mr. Moore, I gather, to defer Mr. Bromley's appearance before the grand jury, is that correct?

A Yes.

Q Did there come a time when you discussed with Mr. Bittman and Mr. Moore the Bromley problem?

A Yes.

Q Was Mr. Bromley present at that time?

A No.

Q Who initiated that conference?

A It was a joint -- I had called the Department of Justice and said I would like to discuss certain aspects of the case.

Mr. Bittman and Mr. Moore said: Why don't you come over and we can talk about it.

Q Let's take it from your standpoint. What was your purpose in seeking this conference?

A To keep Mr. Bromley out of jail, sir.

Q Well, that is a very honest answer and I appreciate it, sir, as his lawyer.

So you went over and talked to them. What did you tell them?

A I told them Mr. Bromley was married, he had a wife that worked on the Hill, he had three kids, he had a house with a big mortgage. For the first time in his life he had started to make some money working as a lobbyist.

I saw impending disaster. I had told him, Mr. Bromley, that. And I wanted to know how serious the charges against Mr. Bromley were being considered by the Government.

I knew that a lot of people had been brought in and I asked the Government quite frankly whether they would tell me whether they considered him a prime defendant or whether they considered him a person on the outskirts.

THE COURT: Was that a prime defendant, Mr. Sandground, with respect to Baker matters?

THE WITNESS: With respect --

THE COURT: Or a prime defendant with respect to perjury matters?

THE WITNESS: With respect to Baker matters.

I told them that I was interested in anything they might tell me about the involvement of Mr. Bromley, and I asked them to be as candid and honest as they could because I had some decisions to make for my client.

BY MR. MORGAN:

Q Did they?

A Yes.

Q What did they tell you?

A They brought out a big black looseleaf book.

Maybe it was sixteen inches tall and about this long (indicating).

Mr. Bittman had it on his desk. It had index cards, index tabs with names all the way down. He took the book and at random he read me names and told me about transactions.

That conversation probably took two hours. He told me about matters in which the Government felt Mr. Bromley was involved.

Q And did you, as an attorney listening to the recounting of those involvements, conclude that Mr. Bromley was a likely defendant?

A Absolutely.

Q As a matter of fact, it was rather serious, was it not, Mr. Sandground?

A I didn't say anything to the Department of Justice at that time.

Q But you knew that it was?

A I went back and spoke with Mr. Bromley. In fact, he came to my home that night and we sat in my den for about three hours, and I said: Is this true? Is this true? Is this true? Because Mr. Bromley had not told me the entire story with the details.

And Mr. Bromley then told me more details and asked my opinion as to whether he would be a prime defendant. And I said: From what I have heard, from my experience, I would conclude that you are a likely candidate for an indictment.

Q What was Mr. Bromley's reaction to that?

A He was, of course, concerned, and I think meaningfully so.

Q After that conference at your home with Mr. Bromley, did you thereafter take any steps to confer further with Mr. Bittman and Mr. Moore or other officials at the



Department?

A Yes, sir.

Q Did that occur shortly thereafter?

A Yes, sir.

Q State what you did in that respect, if you will, Mr. Sandground.

A I made a phone call to Mr. Bittman; I asked for another appointment to see him.

During that period of time I was in court during the daytime, trying cases, so I asked whether he could see me at the end of the court day. About six o'clock I went to his office and I took with me my associate, Bardyl Rifat Tirana, who had recently come from the Department of Justice, within the past year or so, and we discussed with Mr. Bittman and Mr. Moore the situation and what possibly could be done that would assist Mr. Bromley, that he would be able to avoid an indictment, hopefully keep his job, and make his peace with the Government.

Q And what did they say?

A They told me they could make no promises of any immunity. They told me that they couldn't promise that he would not be named as a defendant. But they said if

Mr. Bromley would come in and tell all, tell everything he knew, and cooperate, give them statements, assist them in their investigation, they would be appreciative.

I knew in my own mind that this would possibly go to the benefit of my client, because they would think more kindly to him. I had had some experience in the Government, sitting behind the desk at the Department of Justice. From my experience, I knew that if a man cooperated, often he had a better chance of staying out of jail.

THE COURT: I take it, Mr. Sandground, under the circumstances you are reciting, and from what the Court has heard in this matter, it was apparent to you as an experienced and very able counselor, that the Government was in great need of someone who would spill and talk to them. Isn't that right?

They were looking for a live witness to pin the case on Baker and they were having trouble and they needed someone to cooperate. Which is not unusual in a criminal case.

THE WITNESS: Your Honor, I probably -- I assume that is true. They never told me. In fact, they did tell me the opposite. They told me this: They told me that

they had other evidence relative to tax matters on which they would not need Mr. Bromley's testimony, and they weren't concerned in those areas. They said in other areas his testimony would be crucial, vital, but not for the entire area and at no time did we ever get into the tax matters of the Baker case.

BY MR. MORGAN:

Q I appreciate your forthrightness, Mr. Sandground, in your testimony, and as a lawyer, I am sure I appreciate what you have indicated as to your reaction to the meeting.

THE COURT: Just question, Mr. Morgan.

BY MR. MORGAN:

Q But I feel that I should ask this for the record. Was it your judgment, in light of Mr. Bromley's difficulties, as you understood them, as his attorney, that the problems were such that your proper advice to him should be to go to the Department of Justice and tell all?

A Yes.

Q And did you explain to Mr. Bromley that by doing that any benefits would be derived?

A I told him that neither I nor the Department of Justice would be able to promise him any immunity. I gave

him my opinion, based upon my experience in other matters, and I told him quite candidly, Mr. Morgan -- I said: Wayne, if you cooperate, there is a very good chance that, (a), you will not be named as a defendant, and thus won't be subject to going to jail, or (b), even if you are named as a defendant, and even if you are convicted, the fact that you testify as a Government witness would go in your favor at time of sentencing.

And I said to him: Look, you are a lawyer. You are a member of the Bar.

Wayne Bromley was a fellow-lawyer. He had a job. He had never practiced law. He had a job where he was making money.

I said: You have at least a chance of keeping your job, of keeping your house.

He knew that if he had been indicted, he would lose his job. Subsequently, as you know, when he was named in the indictment as a co-conspirator, he did lose his job. He was asked to resign.

Q To cut through all of this, would it be fair to say that the essence of your conclusions and advice to Mr. Bromley was that the only means that he had to avoid,

in your judgment, an indictment was to cooperate with the Government?

THE COURT: The only hope he had.

BY MR. MORGAN:

Q And hope for the best?

THE COURT: I take it from what Mr. Sandground says, that was his best hope. And that was the best advice you gave him?

THE WITNESS: Yes.

BY MR. MORGAN:

Q And then thereafter, Mr. Bromley did, I gather, accompany you to the Department or did you go to the Department to meet with Mr. Bittman and Mr. Moore?

A We met in four places on many occasions. We met at the Department of Justice. We met in my law offices which at that time were in the Washington Building. We met at Mr. Bromley's home. We met at my home.

Q At this particular time, Mr. Sandground, I would gather that the interviews related to Mr. Bromley's overall relationships with Mr. Baker, is that correct?

A Yes.

Q At what point in time did the name of Clifford Jones

enter into any of these discussions?

A Within the first week in relation to a trip that Mr. Bromley made.

Q I see. After you had had this long talk with -- and I gather on four separate occasions -- Mr. Moore and Mr. Bittman --

A Sir, I didn't mean to say four separate occasions. Four separate places, almost daily talks. There were far more than four. If there were thirty days in a month, we would talk six or seven days, including Saturday. There was a conference during the preparation every day or almost every day.

Q In other words, Mr. Bromley was going all the way in the cooperation, is that right?

A Yes. I didn't want you to think there were only four separate talks.

Q Thank you.

A We would meet often twice a day, subject to everyone's schedule, in different places.

Q And after these long talks that you had, did Mr. Bromley appear before the grand jury?

A Yes.

Q And did you accompany him down to the grand jury?

A No.

Q Was he accompanied by anyone from your office?

A Yes. I had another legal matter that day, an actual court appearance, and as the attorney couldn't go in the grand jury room, it was just a sitting job --

Q I see.

A -- I sent one of the associates just to sit.

Q I see. How long did Mr. Bromley appear before the grand jury?

A I think one day or maybe part of the second day. I don't know.

Q To your knowledge, was he released from the grand jury at that time or was he --

A No, he was not released. To my knowledge, he was not released.

Q I see. Now, one aspect of the problem that you indicated Mr. Bromley had I believe with tax problems --

Let me put it this way: There were several different transactions involving different concerns, were there not, in which moneys had been received in the relationship between Bromley and Baker?

A Yes.

Q Now, in connection with Mr. Bromley's tax problem, as he related it, was the problem related to how these moneys received should be handled on his tax return?

A It was more than that. That was only part of the problem.

Q Well, what was the rest of it?

A There were moneys that Mr. Baker had asked him to report on his tax return that either he knew nothing about or that were only in his name and that he had only acted as a conduit for the money, going to a bank on Capitol Hill, cashing the checks, and giving the money to Mr. Baker.

There was other money that he just -- when he was told: This is the way your tax return is going to be done and this is going to be done by Mr. X -- whose name I can't recall, an accountant for Mr. Baker -- and these are moneys that came in for you, Wayne.

Wayne never got those moneys, from what he told me.

Q Was it your professional judgment, as you reviewed those tax problems, that the only way that Mr. Bromley could sustain his tax return was on the theory that he was merely a conduit for Baker?



A The Department of Justice didn't believe Mr. Bromley during the first two or three interviews. And at one time in the beginning, the Department was taking a rather adversary position, I felt, because they had certain checks, documentary evidence they showed to us.

They said: You got that. Your signature is on it.

Wayne would say: Well, I didn't get it.

They would say: Well, look, we have an affidavit from a man up at the Capitol Hill Bank. They would pull that out and they said: You came on such-and-such a time, you cashed that check; you took the moneys; you came alone or with someone; you put that money in your pocket, the cash. You are not going to tell me you didn't have that money.

This was the way the dialogue went. I felt that there was a great problem because it could be shown that the checks came in his name, that invoices were sent out for some of them on his letterhead, he endorsed the checks and cashed them.

Q And they came, they testified, to believe him after checking out what he had to say. The Court understands that.

I take it it was in Mr. Bromley's interest, where

appropriate, where he felt it was the truth, to show that he was simply a conduit because if he wasn't he had further tax obligations.

A Yes.

THE COURT: I think it is all so self-apparent, Mr. Morgan.

MR. MORGAN: Fine, I hope it is.

THE COURT: And the issue that was before the Government was whether or not they believed this man sufficiently to rely on him for purposes of prosecution of others and not to prosecute him.

I take it that what Mr. Sandground is describing is the typical discussion back and forth with a possibly adversary or questionable witness in order to find out whether or not he is telling the truth.

Isn't that what you are saying?

THE WITNESS: Exactly, Your Honor.

THE COURT: I don't think the details of it are really germane to the motion to suppress.

BY MR. MORGAN:

Q Mr. Sandground, on the basis of anything you told Mr. Bromley prior to his appearance before the grand jury, or thereabouts, would he have been justified, in your

judgment, based on what you told him, to have concluded he had no problems with the Department of Justice?

A I am not sure I understand your question, Mr. Morgan. I told him that I felt from what the Government had told me that he had serious legal problems.

Q I see. Well, did there come any time when you gave any indication to Mr. Bromley or any assurance, based upon this cooperation, that he no longer had any problems?

A No. I understand your question.

In fact, I was shocked when I learned he had been named a co-conspirator. I didn't think that he would be let out. I thought perhaps that the grand jury was going to indict him anyway, name him a defendant, and he would testify, and he would at least not have to go to jail.

When the indictment came out, the first time I saw it in the newspaper, it said he had just been named a co-conspirator and not a co-defendant.

Q Moving along now, Mr. Sandground, to this situation that Mr. Lynch interrogated you about, out at Bromley's home on the evening of March 22 and the early morning of March 23, 1965.

Mr. Bromley called you that evening at your home,

as I recall, is that correct?

A Yes.

Q And you thereafter called Mr. Bittman, is that correct?

A Yes.

Q At, I assume, Mr. Bittman's home or was he at the Department?

A He was at the Department.

Q He was at the Department?

A To the best of my knowledge.

Q And what did you say to Mr. Bittman?

A I told him that I had received a telephone call from Mr. Bromley and related the details of the call.

Q And what did he say?

THE COURT: I am stuck back before that, Mr. Morgan.

What was the significance of this? What was the particular significance of this? Mr. Jones called Mr. Bromley. So what?

THE WITNESS: He had mentioned a transaction which had allegedly occurred in Nevada in a completely different way than Mr. Bromley had related it to me and later re-related it to the Department of Justice.

There was a significant difference in the way the transaction had been set up in Nevada. Mr. Bromley called me and said: Gee, what do you think of this? Why is Mr. Jones saying it to me this way?

THE COURT: Wasn't Mr. Jones reporting on what he understood the transaction was or what he may have even testified as to what the transaction was?

THE WITNESS: Yes.

THE COURT: So what is the great significance? Mr. Bittman knew Mr. Jones' version.

This is one of the great mysteries of this matter. Mr. Bromley has talked about this on the stand. Mr. Moore has talked about it on the stand. For the life of me, I can't see what the importance in Jones' telephone call was.

It is very crucial to this hearing that I am on, Mr. Sandground. I am explaining to you my problem as a judge. Why call Mr. Bittman late at night and say: My goodness, Mr. Jones called Mr. Bromley. What significance was there to that?

THE WITNESS: Mr. Bittman told me that he felt that approaches would be made to Mr. Bromley, once it was

known that Mr. Bromley was cooperating.

THE COURT: But it wasn't known.

THE WITNESS: It wasn't known at that time.

THE COURT: No.

THE WITNESS: Mr. Bittman told me and Mr. Moore told me when we met that night that they felt that this was a possible obstruction of justice.

THE COURT: Oh, yes.

THE WITNESS: And that was the reason that there was a discussion about getting up late at night and going from my home near Fairfax County all the way to Bethesda before the Beltway.

THE COURT: I understand that but that was after you talked to them. Why did you call them? Why did you call Mr. Bittman and say: Mr. Jones just called Mr. Bromley.

THE WITNESS: Mr. Bromley asked me to call Mr. Bittman. He said in the call: Don't you think we had better talk to Mr. Bittman about this? What should I do?

THE COURT: What was there in the call that made him feel he had to talk to anybody about it? I hope I am not dense about it. I am just trying to understand.

THE WITNESS: I am trying to answer your question directly.

THE COURT: I know you are, Mr. Sandground.

THE WITNESS: He felt that he was being set up, Judge. And that is what he tried to tell me that: They are trying to set me up to make the transaction differently than it really was.

THE COURT: How was he being set up?

THE WITNESS: Mr. Bromley felt, he told me, that from the way the conversation went in this call, that Mr. Jones was having someone listen in or recording the matter.

THE COURT: Yes.

THE WITNESS: And he felt that because the transaction was diametrically different from the way he had recalled it, he was concerned about it and anxious at that time to cooperate with the Government and anxious to have the Government believe that he was involved but innocently involved.

THE COURT: But as I understand, when this conversation took place between Mr. Bromley and Mr. Jones, where he had the fear that it was being recorded, he didn't say in

the conversation: That isn't the way it happened, Jones. He didn't deny it. He didn't make any statement. Why didn't he?

I don't understand what was going on unless he had had advance instructions to lead someone along, if Mr. Baker or Mr. Jones or Mr. Neumeyer or Mr. X called him.

Did he have those instructions?

THE WITNESS: Your Honor, to my knowledge, he had no instructions such as that.

THE COURT: I don't mean from you. But I mean in the context of the talks with Mr. Bittman.

THE WITNESS: No, he had no instructions such as that.

THE COURT: Well then --

THE WITNESS: With one exception. During this period of time Mr. Baker was trying to contact Mr. Bromley, was trying to set up a meeting with Mr. Bromley. Mr. Baker and Mr. Bromley had been close friends and there were calls being made to try to set up a meeting with Mr. Baker.

THE COURT: Well, you understand my failure to understand this, what I think is a crucial event in this proceeding.



THE WITNESS: As you know, Judge, when the first call that we are referring to from Mr. Jones came to Mr. Bromley, only Mr. Bromley was there.

THE COURT: That is right.

THE WITNESS: You asked me why didn't he say, that is not the way it was. I can't answer that question. I don't know.

THE COURT: You say the reason he asked you to call the Government was because he felt Mr. Jones was possibly taping his end of that conversation and trying to create the impression that the events were different than Mr. Bromley had testified they were.

THE WITNESS: Yes.

THE COURT: And that is the best you can do with it?

THE WITNESS: That is the only reason that I made the call.

THE COURT: There were no advance instructions or anything of that kind that he should sort of put any call from Jones or Baker off and communicate with the Government before he called back?

THE WITNESS: No.

MR. MORGAN: Your Honor, am I interrupting?

THE COURT: Not at all. I have thinking about this and looking at my notes on it overnight, and this was something very much on my mind.

I hope I haven't interfered with your examination.

MR. MORGAN: Not at all. I appreciate the observation.

BY MR. MORGAN:

Q Mr. Sandground, you related to Mr. Bittman, you have stated, the call to you by Mr. Bromley. Now I put it to you directly: Thereafter, whose idea was it to go to Mr. Bromley's home, have him initiate a call to Jones and record that conversation?

A It was the idea that -- I believe Mr. Moore was on the phone by that time, and Mr. Moore and I and Mr. Bromley had discussed this, and I believe the idea was a joint idea that came from the conversation when I was talking with Mr. Moore.

Q You mean as a practicing attorney reporting this to Mr. Bittman, it could have been your idea to record this private conversation between Mr. Jones and Mr. Bromley over the telephone, is that right?

A No, sir, that is not correct. It was not my idea.

Q I want to know, Mr. Sandground, whose idea it was.

A The idea came from Mr. Moore, so if you feel -- during that conversation it was Mr. Moore's idea. He asked me about it.

Q Fine, thank you.

All right. Now Mr. Moore suggested this be done and you acquiesced, is that correct?

A During that time I think I called Mr. Bromley back and discussed it with him, later calling Mr. Bittman back.

Q And at the time of that call, did you alert Mr. Bromley to the fact that you were coming out to his home along with the Justice lawyers?

A They wanted to go out alone and I felt that I had my duty to Mr. Bromley. Although I didn't want to have to go all the way to Bethesda, I felt to protect Mr. Bromley I had better be there as his lawyer.

There were lots of calls going back and forth. I said: If they are going to come out, I think it is better that I be there.

I had never been to Mr. Bromley's home. Yes, I had been there once before. They had never been there. So we decided I would drive to Georgetown from Virginia. The Government had an apartment for Mr. Moore and

Mr. Bittman, where they were living in Northwest Washington, and we met there and I directed them out. They had to pick up what I thought at that time was a Government secretary, who lived somewhere in the general vicinity.

Q I see. Of course, we know you arrived at Mr. Bromley's home.

Will you state succinctly what then happened, who said what to whom?

THE COURT: Well, more specifically, what the Court is interested in at this point in this account, Mr. Sandground, is to what extent did you and Mr. Moore and Mr. Bittman and Mr. Bromley or any combination of those parties in your presence discuss the nature of the conversation that would be initiated?

In other words, what would Mr. Bromley say when he called Mr. Jones. That is the thing we are interested.

THE WITNESS: He would say words to this effect: You know, I have been thinking about your conversation and it wasn't that way. This is the way it really was. And he would repeat in substance the way he had told it to the Department of Justice. And he would then wait for a reply.

THE COURT: Did that occur?

THE WITNESS: I believe the substance of that occurred. I can't recall this line-for-line. I saw a transcript later of the call.

I believe there was a discussion of a meeting.

THE COURT: Was it agreed that he would say that he had not been before the grand jury and is wondering what he was to say?

THE WITNESS: Yes, that was one of the things that Mr. Bittman asked him.

BY MR. MORGAN:

Q Mr. Bittman told him to say that?

A Either Mr. Bittman or Mr. Moore mentioned that subject to him. Not wrote out the language but mentioned that particular.

Q Would it be fair to say, Mr. Sandground, that whatever may have been said to Mr. Bromley with respect to his handling the call would have been said by Mr. Bittman or Mr. Moore, or did you have some observations?

A No, I had no observations.

Q You were just present?

A Present as his lawyer.

Q You were there to protect your client as the

circumstances might require, is that correct?

A I sat there and drank coffee and did not participate in the listening to the conversation. I was watching it but I did not participate.

Q Can you recall anything else said to Mr. Bromley before he initiated this call?

A No, I cannot recall anything specifically.

Q Do you recall whether anything was said with respect to his commenting about tax problems that he might have to Mr. Jones?

A I can't recall specifically but, of course, that was one of the subjects under discussion, was the question of the tax.

Q Do you recall whether Mr. Bittman or Mr. Moore suggested that Mr. Bromley indicate that he was going to have to go before the grand jury and he was wondering what he was going to say?

A I remember that was part of the conversation.

Q Now let me see what your recollection is of the cast of characters out here that evening.

THE COURT: Well, it is pretty clear who was there, isn't it?

MR. MORGAN: There is one point, Your Honor, that

I want to clear up.

BY MR. MORGAN:

Q Did you listen to the telephone as Mr. Bromley was holding it in his hand?

A I did not.

Q Did anyone else?

A Well, there were two phones in the house.

Q Yes.

A The call was made from the bedroom, Mr. Bromley's bedroom. I was standing in the hall upstairs. I could see Mr. Bromley on the phone.

The other phone was in the kitchen downstairs where the stenographer, Mr. Moore and Mr. Bittman were. That was the geographic location. I could see Mr. Bromley. I could not see the Government people.

Q Were you in the bedroom with Mr. Bromley?

A No, I was outside in the hall, in the hallway of the bedroom.

Q Was Mr. Bittman in the bedroom with Mr. Bromley?

A No, he was downstairs.

Q Was he in the door of the bedroom?

A Not to my recollection.

Q I see. So the call was completed and you heard no part of this conversation while it went on?

A No, I heard no part of it.

Q I see. Thereafter, the reporter transcribed it and as I understand it read it back to all of you, is that correct?

A Yes.

Q That would be your first knowledge of what happened in that conversation?

A Downstairs in the den it was read back, immediately thereafter.

Q I see. And then thereafter you all went your separate ways, is that correct?

A Yes, sir.

Q All right. Now, this occurred, and I believe this is self-evident from our record, on the early morning shortly after midnight of March 23, 1965.

Now, did there come a time the following day or thereabouts that Mr. Bromley again called you about a call he had received from Mr. Jones?

A I can't recall the time sequence in such detail,



because my recollection is fuzzy as to whether it was the next day. I really just don't know.

THE COURT: This might be a good time to take a little recess. We have been at it quite steadily and so has Mr. Sandground. How about taking a five-minute recess?

MR. MORGAN: I will always take that.

(Whereupon a short recess was taken.)

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## CROSS EXAMINATION

BY MR. MORGAN:

Q Mr. Sandground, in an effort to move along, there came a time, did there not, when you again called Mr. Bittman or Mr. Moore with respect to the second call received by Bromley from Mr. Jones?

A Yes.

Q Now, as an outgrowth of that conversation, did there come a time when this device was placed on the telephone in your office?

A Yes.

Q For the purpose of Bromley's placing calls to Jones and Baker?

A Yes.

Q Whose idea was that?

A To the best of my knowledge Mr. Moore's.

Q Mr. Moore's?

A To the best of my knowledge.

Q When did you first become mindful of the fact that they proposed to come to your office with the FBI man and put an attachment on your phone and record these conversations?

A That morning.

Q The morning they showed up at your office?

A Yes.

Q Did they say they were coming over or did they just show up there?

A I believe they said they said they were coming over.

Q I see, and you arranged to have Mr. Bromley there or did he happen to be there at that time?

A I don't recall.

Q But, in any event, Mr. Bromley was there, is that correct?

A Yes.

Q And, now, did Mr. Bittman or Mr. Moore give any or make any remarks to Mr. Bromley as to what he should do in making these calls?

A They told him, I think the phrase was "play it by ear."

Q Did they give him any observation at all about what the purpose of the call would be?

A Not to the best of my recollection, sir.

Q Specifically I would ask Mr. Sandground, if it is not a fact that at that time or shortly before that there were discussions about the possibility of a meeting with Mr. Jones, Mr. Baker and Mr. Bromley?

A Yes, there were such.

Q When did that happen to the best of your recollection.

A The night that the first phone call was overheard; thereafter, after the transcript was read back, I believe there was a question, "Are you going to be in Chicago or do you have any travel plans" and I believe Mr. Bromley responded, "No." And, at that time there was a discussion about a meeting.

THE COURT: Whose idea was it to have the meeting? Was it your idea or Mr. Bromley's idea or Mr. Moore's or Mr. Bittman's idea?

A THE WITNESS: It was not my idea. Mr. Bromley was trying to show that he was telling the truth and was trying to persuade the government that he was telling the truth and I can't recall whose idea it was.

BY MR. MORGAN:

Q You did testify to the fact that there were discussions concerning the setting up of a meeting with Bromley, Baker and Jones present, is that correct?

A It was a possibility and I think that was really accurately described, sir.

Q Do you recall in those discussions if consideration was given to setting this meeting up in Washington?

A I can't recall.

Q In any event, Mr. Bromley and Mr. Moore, you and Mr. Bittman were in your office and calls were placed which we know about by Mr. Bromley to Mr. Baker and Mr. Jones, is that correct?

A Yes.

Q Now, was your role in the recording of these conversations essentially that of being passively present, sir?

A Yes.

Q Did you participate in any way?

A No.

Q Did you give any legal advice or instructions to Mr. Bromley with respect to what he should say in these conversations?

A I did not.

Q So, whatever was said by Mr. Bromley would have been inspired by Mr. Bromley or someone else and certainly not by you, is that correct?

A Yes.

Q So, these calls were made and did you become mindful as an outgrowth of those calls that a meeting was arranged in Los Angeles?

A Yes.

Q Now, when in point of time, Mr. Sandground, did you decide that you would go to Los Angeles?

A The very day of the meeting at approximately 11:00 o'clock, Mr. Bittman asked me to come over and see Mr. Willens and Mr. Willens wanted to see me.

I went to the Department of Justice. In fact, the government sent a car for me where I went over to the Department of Justice with Mr. Bromley. I was asked whether I could go at approximately 11:00 that morning -- 11:00 or 11:30.

Q And, what happened at Mr. Willens' office?

A Mr. Willens indicated that Mr. Bromley had been most cooperative and asked me whether I would accompany him and he had prepared a document and asked me to read that document and sign that document, which had been prepared that morning, I believe.

THE COURT: That was the consent, was it?

THE WITNESS: Yes.

BY MR. MORGAN:

Q Was it already prepared when you got there?

A I can't answer that because I don't know, but I know that it was signed that morning and I know that Mr. Willens and I had a discussion about this and Mr. Willens

had spoken with Mr. Miller who was, I believe in the next office who had spoken with the next power up in command.

Q I am not sure this is clear. Who were in Mr. Willens' office?

A Mr. Willens and myself and Mr. Bromley was outside, Mr. Mittler, Mr. Moore and Mr. Bittman.

Q I see.

A And, Mittler walked out during the time Mr. Bromley was outside.

Q In this meeting were you acquainted with the fact that the representatives of the Department contemplated putting a radio transmitter on Bromley's person?

A Yes.

Q At that time?

A Yes.

Q Did they ask you if that was okay with you?

A Yes, and I had a discussion then with Mr. Bromley. Mr. Bromley was outside and I went out and talked with him about this.

Q I assume you asked Mr. Bromley if this was all right with him.

A I asked him if this was all right with him.

Q Mr. Sandground, as Mr. Bromley's counsel, did that appear to be a bit degrading to strap a transmitter on

his person?

MR. LYNCH: Objection, your Honor.

THE COURT: Objection sustained.

BY MR. MORGAN:

Q At any rate, the proposal of the Department was agreed to, is that correct?

A Yes.

Q Just a question about your going. Is it your testimony, Mr. Sandground, you were asked to accompany Mr. Bromley?

A Yes.

Q Did anyone at any time suggest to you that -- in that room, that you not accompany Mr. Bromley or that you not go to California?

A No. No.

Q And, was it understood at that time that -- I suppose that the government was going to pay your expenses if they asked you to go out there, is that right?

A Yes. We, in fact, talked about that. I said, "This is going to be an expense to my client." Mr. Moore said, "No, the government will reimburse you for your full expense. We can cover you under a per diem basis."

Q So, you and Mr. Bromley rode together, is that



correct, on a plane to California?

A Yes.

Q And, the representatives of the Department of Justice went in a different plane, is that correct?

A As far as I know.

Q At least they weren't in the same plane with you?

A I have learned that they were on the same plane with us -- that there was a representative on the plane. I learned later. I did not know that at the time.

Q Now, let's go back just a minute. Were you present at that session -- correct me if I am wrong. I understand it was at your office at which this gadget was put on Mr. Bromley's person.

A Yes.

Q And, was Mr. Bromley given some instructions on how to use it?

A Yes, sir.

Q Was it activated at the time as you recall?

A No, it was not.

Q It was not.

A No.

Q Do you recall -- well, did this gadget have a device for turning it on and off? Do you remember that?

A Yes.

Q Mr. Bromley was shown how to turn it on and off?

A Yes.

Q I see. All right, we will get to that plane to California. What did you do then, Mr. Sandgrund?

A I went to a hotel room in the Beverly Hilton and I waited. The only purpose I was there for was to receive a telephone call from Mr. Bromley if anything should come up. That is what I did. I went to a room. I watched television and read a book and went out to get something to eat for about an hour.

Q In as far as the events transpiring in Los Angeles were concerned, save as you may have found out about it later, you had no personal knowledge as to what was going on in Los Angeles?

A Absolutely no personal knowledge as to what was going on.

Q I see.

A I was in a room in a hotel and I remained in that room except for the time that I left for approximately an hour to an hour and a half that evening to get some food in a restaurant either in the hotel or close to the hotel. I don't recall.

Q You returned, I believe you testified, to Washington

the following day?

A Early in the morning I caught the first airplane out which leaves Los Angeles at approximately 9:00 o'clock, but I took the airport limousine or taxi, and it takes -- I left about an hour and a half before flight time.

Q Did Mr. Bromley return with you or did he remain?

A He did not.

MR. MORGAN: Mr. Sandground, I appreciate your tolerating my questions. Thank you very much.

#### REDIRECT EXAMINATION

BY MR. LYNCH:

Q Just referring you to the evening when you went to Mr. Bromley's home with Mr. Moore and Mr. Bittman and the lady that you told us was from the Justice Department -- the secretary with the Justice Department, before the call was placed, how much time elapsed, do you recall before the call was placed?

A As I recall the call was placed immediately when we got to Mr. Bromley's, but it was not completed immediately. There was a time lag. My best recollection is over an hour -- about an hour or over.

Q Was there a series -- was there a fair amount of discussion going on at that time during the period

of time before -- during that hour?

A We sat and talked during that entire hour while we were waiting for the phone call.

Q Was Mr. Bromley given a script as to what he should say in this conversation?

A Written script, no.

Q Was he told say, A, B, C, D, E or something of that sort?

A No, as I recall again, the phrase that Mr. Bittman used or Mr. Moore was the expression, "play it by ear."

Q That is the phrase you mentioned the other day?

A That is my recollection.

THE COURT: You used that expression with respect to a wholly different incident. You told the Court that Mr. Bittman suggested that the occasion you are now being questioned about, that you should say, what I read to you on lines 23 and 25 of the page 6 of this transcript.

"Now, what is your testimony, Mr. Bromley? Look, as I told you earlier, I haven't actually been before the Grand Jury and I am wondering what I am going to say if I am called. And, you responded in questions of the Court as well as questions of Mr. Morgan that was the suggestion

of Mr. Bittman.

THE WITNESS: That was true, your Honor, and he also used the phrase as to other matters -- "play it by ear."

THE COURT: Very well.

BY MR. LYNCH:

Q After this evening at Mr. Bromley's home, you mentioned in response to my question and also Mr. Morgan's question that you were again told shortly thereafter by Mr. Bromley that Mr. Jones had called him again, is that correct?

A Yes.

Q Did he tell you at that time that Mr. Jones had suggested that he set up a meeting for the end of that week in Los Angeles?

MR. MORGAN: That is a leading question.

THE COURT: I will permit it.

THE WITNESS: I can't recall the exact time.

BY MR. LYNCH:

Q But, that was the subject matter of the call?

A That was the subject matter, but I don't recall the exact time.

Q Prior to the meeting of you and Mr. Bittman and Mr. Moore at Bromley's home, sometime during the prior week, had Mr. Bromley mentioned a Dee Kaufman to you?

A Yes.

Q And, had you in turn called the Department of Justice and spoken to them, Mr. Moore or Mr. Bittman and told them about this conversation that you had with Mr. Bromley?

A No, that came out in a meeting with the Department of Justice.

Q I see.

A I did not call the Department of Justice and say this.

Q Very well.

MR. LYNCH: I have no further questions.

THE COURT: Mr. Sandground, I have one question. The purpose of to make the record clear. Were all fees that were paid to you in connection with the services that you have described, paid directly by Mr. Bromley?

THE WITNESS: Every one.

THE COURT: And, you had no obligation from him to report the developments that were occurring that you were handling for him as counsel in the manner you have described to anyone else involved in this investigation. You were not keeping Mr. Baker or anyone on behalf of Mr. Baker or anyone else apprised of the developments that

taking place at the Department of Justice?

THE WITNESS: No.

THE COURT: Thank you very much.

THE WITNESS: Am I excused?

THE WITNESS: Thank you.

(Witness leaving stand.)

## CLIFFORD JONES

was called as a witness, and, having been first duly sworn  
by the deputy clerk, was examined and testified as follows:



## DIRECT EXAMINATION

BY MR. MORGAN:

Q Mr. Jones, state for our record, please, your residence.

A My residence is 1100 Rancho Circle, Las Vegas, Nevada.

Q You have been present, I believe, in this courtroom during the questioning of various witnesses incident to this hearing, is that correct?

A] Yes.

Q Such being the case, I will move along more rapidly than usual. Did there come a time, Mr. Jones when you were subpoenaed to appear before a Grand Jury in the District of Columbia during the year, 1965?

A Yes.

Q And, what were you subpoenaed for based on the subpoena you received?

A Well, the subpoena that I received was a subpoenaeduces tecum, and it required me to bring all of the documents concerning a matter concerning the matters of the Waikiki Savings and Loan and Bobby Baker. It also mentioned some other people including Bobby Baker and any transactions with Bobby Baker.

Q And, you did appear before the Grand Jury?

A Yes, I came here to Washington and appeared before the Grand Jury.

Q Where did you stay?

A I stayed at the Sheraton Carlton in the suite of Fred Black, who was a long time friend of mine from college days and I believe the number was 344.

Q Did you customarily stay there when you were in Washington?

A Yes, I had a key to that suite and I customarily stayed in that suite when I was here.

Q And, the following day you did appear and testified before the Grand Jury?

A The following day I did appear and testified before the Grand Jury.

Q Thereafter what did you do, Mr. Jones?

THE COURT: May we have the date?

MR..LYNCH: March 17, 1965.

THE COURT: March 17th. All right, thank you.

BY MR. MORGAN:

Q March 17th, after testifying, what did you do then?

A I returned to the suite of the Carlton in preparation of going back to Los Angeles.

Q Was anyone at the suite when you arrived?

A Yes, Dee Kaufman was there when I left and as I recollect she was there when I returned.

Q Who was she?

A Dee Kaufman was Fred Black's secretary.

Q Was this living room of this suite, was that Mr. Black's office?

A Yes, it was his office. It was his office or one of his offices as well as a living quarters.

Q I see, and that is where his secretary was physically located?

A Yes.

Q Did you say anything to Miss Kaufman on this occasion?

A Yes, I did.

Q What did you tell her?

A I told her that I had testified before the Grand Jury, which she knew I was going there. To the best of my recollection I told her they had asked me about a number of people including Wayne Bromley, and that they had gone into quite some detail about my business dealings with Wayne and that I had told them about the retention of Wayne Bromley as an attorney for First Western.

Q And, did you make any suggestions to Miss Kaufman

as to what she do with that information?

A Yes, I suggested she get the message to Wayne and tell Wayne that I left that message for him.

Q Then you returned -- Why did you do that, Mr. Jones?

A Well, I knew that Dee Kaufman was an oldtime friend of Wayne's because she had known him since the days when she worked up at the Capitol herself and she was very close friend of Wayne's.

Q Why would be interested in Mr. Bromley knowing about your appearing before the Grand Jury?

A Well, I thought it was the courteous thing to do. He was a friend and to let him know that he was being investigated or being -- there were questions being asked about him and his transactions.

Q Did you thereafter return to Las Vegas?

A Yes, I did.

Q Did there come an occasion thereafter when you had any further contact with Miss Kaufman?

A Yes, I talked to her after that. I recall the conversation. She told me that she had met with Wayne and had delivered my message and that he was upset because of the fact that I hadn't called him myself. And, as I recollect, I asked her for his home phone number which

she gave me and I think that I said, "Well, I will call him."

Q And, you thereafter did call him, Mr. Jones?

A Yes, I did.

Q And, you have been here in this proceeding.

Is that the call that we have referred to prior to the recorded conversation on March 22, 1965?

A Yes.

Q And, to the best of your knowledge and recollection, what did you say in that conversation to Mr. Bromley?

A In that conversation I told Wayne that the Grand Jury had asked me a number of questions about him and that they asked me if I had ever had any business dealings with him, and that I had told the Grand Jury that I had recommended that he be hired as an attorney for First Western and that he had been hired, and to the best of my recollection I told him they had asked me how much he had been paid per month and I told them either \$500 or \$1000 per month, because I didn't remember distinctly at that time.

And, I told him that they asked me when we had our first discussions concerning his being retained and that I told them that it was at the office of Bobby Baker

in the Capitol in Washington D. C. And, that I also told them that I had discussed this matter with Bobby Baker. I told him that they had also asked me if any of the fees paid to -- or if I caused any fees to be paid to Wayne Bromley that were intended for Bobby Baker and I told them no, not that I knew of, and with that he said, "Well, I want you to know that I did give some of the money to Bobby." And, I said, "Well, if you did that it was without my knowledge."

And, then I said, "Well, if you did that -- if he got any of the money, it was certainly some arrangements between the two of you that I knew nothing about."

I told him that all the invoices, checks and correspondence between him and First Western was being sent to the Grand Jury. He seemed to agree with everything that I said. He did say this. He said, "Well, thanks, because I have a real tax problem." And, as far as I can remember at the present time, well, that was the context of the conversation.

Q Was there any expectation at the end of that conversation that Mr. Bromley would call you back?

A None whatsoever.

Q Did you monitor that conversation, Mr. Jones?

A No, I did not.

Q Subsequently, Mr. Bromley called you back on the evening of March 22nd, your time, is that right?

A That is right.

Q And, did you know that conversation was being monitored?

A I did not.

Q Did you regard this as a private conversation between you and Mr. Bromley?

A I certainly did.

Q Incidentally, after that conversation was concluded as recorded here, and I am speaking now in terms of your knowledge and impressions, was there any idea of a meeting between you and Mr. Bromley?

A No.

Q Now, did there come a time thereafter, Mr. Jones, when you again called Mr. Bromley?

A Yes, the next evening.

Q Will you state for the record the substance as you recollect that conversation?

A Well, in the second conversation, the night before the one that I know now was recorded, he had shown some concern about the documentation out there, particularly the

1099's, and he said --

Q What is a 1099?

A That is a report that is sent to the United States Government or the Internal Revenue Department which states the amount of money paid by an employer to an employee, and it is sent out at the end of each year and it is useful in the preparation of their tax returns.

Q Go ahead.

A I had stated to him in that conversation that I would, to the effect as I recollect, that I would look into it and that I wanted to be as helpful as I could, but I didn't want to get involved, because some of the things that he had told me were strange to me, but I did the next day look the documents over or get the information and I called him back.

Q Were these the documents relating to the First Western Financial transaction that you had told the Grand Jury you would supply it?

A Yes, they asked me who they should subpoena to get these records, and I told them that if they would like, I would be very happy to furnish them to them and they said, "Well, fine." I said, "Well, I will get them for you right away," or something to that effect



to the best of my recollection.

Q Did you also, and I believe this is indicated by the conversation -- did you also indicate to Mr. Bromley that you would endeavor to make those records available for his information?

A Yes, I did.

Q And, in this conversation following the recorded conversation, was anything said about a meeting between you and Mr. Bromley?

A Yes, he said that -- as I recollected, he wanted to talk to me. He said that during the recorded conversation, and asked if I was going to be east, and I said, "No." Then he said he was going to be in Chicago. And I asked him if he was going to be out West, and he said no to that.

At the end of that recorded conversation, I think he did say something, "Well, maybe I will see you when you are in the east, but I didn't have any expectation of any meeting at that time.

Q I am referring now, Mr. Jones, about the conversation when you called him following that. Was anything said about a meeting then?

A Yes, there was.

Q What was said?

A He said he would like to have a meeting with me and wanted to know if I would come to Washington. This is to the best of my recollection as to what transpired, and I said, "No, that I had no plans to come east and I wouldn't come east." I just had no plans to come east.

He said, "Well, I would like to talk to you." And, he said, "I would like to come out there," or something to that effect, and something to the effect that he was broke and he asked me if I would pay his way, and I said, "Of course."

He said, "I would like to have Bobby Baker there," and I said, "Well, I still don't think it is a good idea." He said, "Well, I think that he should be there." I said, "Well, that is up to you -- whatever you want to do."

Q Why didn't you think it would be all right to have Baker.

A Well, there had been mention of Bobby Baker being at a meeting in a recorded conversation, and there I said that I didn't think it was a good idea, and the reason why I didn't think it was a good idea, as far as I can

as to what was in my mind at that time, there had been so much publicity and notoriety, and things going on as far as Bobby was concerned, and I just didn't think it was wise to have him in a meeting such as this.

Q Now, after the conversation that you have just testified to, did there come a time when Mr. Bromley called you?

A Yes, I believe he called me the next day.

Q And, of course we have the transcript of that and we will not go into that. Did you know that that conversation was being recorded?

A I did not.

Q Did you contemplate that as a private conversation between you and Mr. Bromley?

A Yes, I did.

Q And, then did Mr. Bromley call you a second time concerning Los Angeles meeting?

A Yes, he did.

Q Did you know that that was being recorded?

A I did not.

Q Did you regard that as a private conversation between yourself and Mr. Bromley?

A I did.

Q Now, in connection with that meeting in Los Angeles, you proceeded from Las Vegas to Los Angeles and registered at the Beverly Wilshire hotel, is that correct?

A That is correct.

Q Did there come a time when Mr. Baker and Mr. Bromley appeared at your suite at the Beverly Wilshire?

A Yes.

Q And, there has been testimony here about a third party. Do you recall the third party?

A I didn't recall it until the testimony of Mr. Bromley yesterday, and now I do recall it, but there was a young lady that was with Bobby Baker and not with Bromley.

Q And they entered the suite. Was there conversation upon entering the suite -- I suppose?

A Yes, there was conversation between the four people present in the living room of the suite.

Q How long did that go on?

A I don't know, but some little time -- a few minutes.

Q Then what happened?

A As I recall, Bobby Baker, Bromley and I retired to the bedroom.

Q And, --

THE COURT: Whose idea was that?

THE WITNESS: I can't recall, but I think it -- I believe it was either Bobby's or Wayne's, because they were in a hurry to get -- Bobby was in a hurry to get along with other activities, and apparently invited Wayne to go along and they wanted to go, but my recollection isn't such that I remember who said, "Well, let's go in the bedroom and talk."

BY MR. MORGAN:

Q Did you know, Mr. Jones, at the time that Mr. Bromley entered your suite, that he had on his person a microphone capable of picking up conversations and a radio transmitter capable of transmitting those conversations?

A I did not.

Q Did you regard this meeting with Mr. Baker and Mr. Bromley to be a private conversation in your suite at the Beverly Wilshire Hotel?

A Yes, I did.

Q How did this meeting break up?

A To the best of my recollection, it broke up, Bobby just decided that he was going to leave, and he left with a young lady, and told -- as I recall, he told Bromley,

"I will see you later on at the Beverly Wilshire. There was some remark made by Bromley.

Q At the Beverly Wilshire?

A Pardon.

Q See him at the Beverly Wilshire?

A Beverly Hilton.

Q I see. All right.

A There was some remark made by Mr. Bromley about getting him a girl and Bobby's response to that was that I have already taken care of that with you. But, anyway, Bobby and the girl left and I don't know just where they went, and Bromley and I were still in the room for some time.

Q How long?

A I would say maybe fifteen or twenty minutes. I got -- I packed my things and got ready to leave, as I recall.

Q In contemplation of returning to Las Vegas?

A Returning to Las Vegas.

Q Then what did you and Mr. Bromley do?

A Mr. Bromley and I went downstairs together.

I checked out of the hotel -- went to the desk and checked out of the hotel. He was there with me when I

checked out.

We went out and I believe we went to the front of the hotel and got a cab. And, he and I got in the cab together and drove to the Beverly Hilton Hotel where I dropped him off.

Q Then you went on to the airport?

A I went on to the airport and returned to Las Vegas. That is the best of my recollection.

Q All right. When was the next time you saw Mr. Bromley?

A The next time I saw Mr. Bromley was yesterday here in this courtroom.

Q All right. Thank you, Mr. Jones.

#### CROSS EXAMINATION

BY MR. LYNCH:

Q Mr. Jones, about what time did you get through with the Grand Jury on the 17th of March, 1965?

A I don't recall. I believe it was -- I remember that the weather was very bad. It was either raining or partially raining or snowing, and it seems to me like it was -- to the best of my recollection around 12:30. I think I went in at 10:00 o'clock and came out about 12:30.

Q Then, you returned then right away to the suite

at the Carlton, is that correct?

A Yes, I had some difficulty getting a cab and finally got transportation, I believe, and went.

Q Did you have a plane out of Washington back to Las Vegas at some point that afternoon?

A As I recall, to the best of my recollection, I left sometime that afternoon.

Q Now, who else did you see in the suite when you returned from the Grand Jury?

A I don't -- I can't be certain. It has been a long time ago, but I don't believe I saw anyone else, besides --

Q Just Dee Kaufman?

A Dee Kaufman.

Q Was Mr. Black there?

A I don't believe so. I don't remember his presence at all. I don't even remember whether he was in town at that time.

Q You had been interrogated among other things about the Waikiki transaction, is that correct?

A Yes, that is what I was subpoenaed for, yes.

Q In the course of that you were also asked questions about your relationship with Wayne Bromley and Bobby Baker, is that correct?



A I was asked about my relationship with a number of people, most of whom I didn't know or never heard of, but there was a long list of people, and they ask similar questions, and they asked detailed questions about my relationship with people that I had already testified to that I didn't know.

Q But, you did know Bobby Baker.

A I did know Bobby Baker.

Q And, you did know Wayne Bromley?

A I did know Wayne Bromley.

Q Now, when you told Dee Kaufman, you told her just about Wayne Bromley and the questions asked about him?

A Yes, as I recall, that is the best of my recollection.

Q And, you told her what you told the Grand Jury about Wayne Bromley, is that correct?

A I didn't tell her -- the best of my recollection as I remember at the present time, I didn't tell her in detail like I have testified here. This I told Wayne when I talked to him on the phone.

Q Was this just a casual remark that you made to Miss Kaufman?

A It wasn't casual at all. I thought that she

should give the message to Wayne that I had been interrogated about him and what it was.

Q And what your answers had been.

A I think I might have mentioned. I don't recall.

Q Didn't you in fact, tell her that they had asked about Wayne Bromley, about his retention by you and or First Western Financial?

A I have so testified.

Q And, you had told them it was a transaction just between you and Wayne Bromley, is that correct?

A Perhaps that is correct. I don't recall. My memory isn't that accurate at the present time.

Q Didn't you also tell her to tell Wayne Bromley that you had told the Grand Jury you met only with Wayne Bromley at the time that the agreement was made to hire Wayne Bromley? Did you tell her that?

A No, I didn't tell her that.

Q Was that true.

A Well, I might have told her this. At the Grand Jury they asked me this question. They asked me where I first discussed the matter of the retention of Wayne Bromley with him, and I told them at the Capitol in Bobby Baker's office, and that I testified that he and I were there, but that Bobby -- I had discussed it also with

Bobby.

Q Was there some other place that you discussed this with Wayne Bromley?

A Yes.

Q Where?

A We discussed it a second or maybe a third discussion was held in Las Vegas, Nevada, but they didn't ask me about any subsequent conversations.

Q Then, there was a discussion out in Las Vegas, is that right?

A Yes, there was.

Q And, was that after the Connon Testimonial Dinner?

A It was on Sunday after the Connon Testimonial Dinner.

Q Who else was there when that was discussed.

A Who was there?

Q Yes.

A Mr. Baker was there and Mr. Neumeyer the president of First Western was there.

Q Was it at that time that Bromley told that he was going to be sent in periodic payments \$10,000?

A That is my recollections

Q But, money was discussed on that occasion.

A On that occasion I introduced Mr. Bromley --

THE COURT: What has this got to do with the motion in view of your repeated objections?

MR. LYNCH: Well, I am trying to get to the Dee Kaufman discussion, your Honor.

THE COURT: You are asking about things that took place after that.

MR. LYNCH: Before that, your Honor. I want to know whether or not any of this was related to Mrs. Kaufman.

THE COURT: I think this is entirely proper.

MR. LYNCH: Improper?

THE COURT: Proper.

THE WITNESS: To the best of my recollection nothing was said about that.

BY MR. LYNCH:

Q In other words, you didn't ask Dee Kaufman to refresh Mr. Bromley's recollection that there were two meetings -- one in Las Vegas and one in Washington and you just mentioned the one meeting in Washington.

A I might have said to her that I was asked when the initial meeting had taken place and the initial discussion and I might have told her that I said it was on the Hill at the Capitol.

Q Well, didn't you in fact, practically drill Mrs. Kaufman on what should be said or what you did say?

A To the best of my recollection I did reemphasize the fact that she should get word to Mr. Bromley that I have been interrogated about him, yes.

Q And to tell him what you had said to the Grand Jury, isn't that correct?

A To tell him what I had been asked about him before the Grand Jury.

Q Didn't part of the information imparted to Mrs. Kaufman relate to what you had responded to, -- what your answers were to questions that had been asked.

A That is possible. If I told her the questions, I certainly believe I would have told her the answers.

Q You wanted Mr. Bromley to know the answers, is that correct?

A I wanted Mr. Bromley to know that I had been asked questions about him.

Q In fact, did you repeat to Mrs. Kaufman on several occasions what you had been asked and what you responded.

THE COURT: Are you talking about on that day?

Q On that day, yes.

A It is quite possible. I don't remember that, but

it is quite possible that I might have repeated it more than once.

Q Then didnt you ask Mrs. Kaufman to repeat back to you what you had just told her, so you would be assured that she was relaying the story that you had told her to relay?

A I don't recall.

Q Sir.

A I don't remember. To the best of my recollection I don't remember.

Q None the less you say you just mentioned this casually to Mrs. Kaufman on the occasion when you returned from the Grand Jury?

THE COURT:

No, he hasn't said that. He said that he may have repeated it to her several times. He didn't say casually.

MR. LYNCH: I though he mentioned --

THE COURT: Where you and he are differing is on your adjectives.

BY MR. LYNCH:

Q After you had told this to Mrs. Kaufman, did you have any concern that she get ahold of Mr. Bromley right away and relay this to him?

A I know -- to the best of my recollection I wanted

him to know it.

Q And, you wanted him to know it very quickly, didn't you?

A I don't really recall. I don't remember just what was in my mind at that time.

Q Well, this was on Wednesday, March 17th, isn't that correct?

A That is correct.

Q Didn't you call Mrs. Kaufman the following day and ask her if she had gotten this information to Mr. Bromley?

A I do recall that I called her during that week, yes, or called the office during that week, and talked to her.

Q Didn't you call more than once in order to find out whether or not she had contacted Mr. Bromley and advised him?

A To the best of my recollection I called again on the 22nd -- the afternoon of the 22nd, and that is when she delivered the message that I have already mentioned here.

Q Didn't you call her on one or more occasions when she said that she hadn't been able to meet with Mr.

Bromley as yet?

A I remember one occasion.

Q One occasion?

A Yes, sir.

Q So, --

A That is my recollection.

Q So, you were rather anxious to get the story or get this information to Mr. Bromley, isn't that correct?

A I wanted him to know that I had testified, yes.

Q And what you had testified?

A What I had been asked about and what I testified.

Q Now, on the afternoon -- withdraw that. Did you incidentally call Mrs. Kaufman from Las Vegas when you inquired as to whether or not she had contacted Bromley and imparted the information?

A Yes, I was calling from Las Vegas.

Q And, you called her on the following day, you say, and found out that she had not yet contacted him?

A I didn't say that. That is what you said.

Q Well, --

A I said during that week I called.

Q That is the week following Wednesday?

A Yes.

Q Now, you say the following Monday you called her



and she advised you that she had contacted Bromley?

A That is correct.

Q And, she said that Bromley was upset that you hadn't talked to him personally.

A That is my recollection of what the conversation was.

Q Then that evening you spoke to Mr. Bromley directly.

A That evening I spoke to Mr. Bromley directly -- personally.

Q About what time of the evening was it? Do you remember when you called?

A I called from my home. I would say approximately 6:00 o'clock Las Vegas time or 6:30 perhaps. It was around 9:30 Washington time.

Q And, you had the conversation you related?

A That is correct.

Q And, now do I understand that Mr. Bromley just didn't say anything in the course of that conversation?

A Well, he did say what I have testified that he said, and what he did say led me to believe that he agreed with everything I told him. He made no objection to anything that I told him.

Q Did you remember --

A He told me also --he thanked me and said that he had a tax problem.

Q Now, do you remember in the interim between the time that you spoke to Mrs. Kaufman and the time you talked to Bromley, the meeting that you had with Mr. Baker and Mr. Bromley and who else was there at the meeting of the Cannon Testimonial Dinner?

A It wasn't the Cannon Testimonial Dinner.

Q After the Cannon Testimonial Dinner?

A Mr. Neumeyer.

Q Mr. Neumeyer.

A Yes.

Q Do you recall that meeting between the time that you spoke to Mrs. Kaufman and the time that you spoke to Mr. Bromley on the 22nd?

A I don't understand the question at all.

Q All right.

THE COURT: There is no evidence that he didn't recall that meeting at any time.

MR. LYNCH: I wanted to find out.

THE COURT: He simply testified that when he talked to Mrs. Kaufman or Miss Kaufman that he told her what

he had been asked about. He said he had not been asked about the Cannon meeting. I don't know what you mean did he suddenly recall it. There is no evidence yet before me -- there may be in your mind that I don't know about, but, there is no evidence before me.

BY MR. LYNCH:

Q At the time that you appeared before the Grand Jury, Mr. Jones, did you remember the meeting that you had out in Las Vegas with Mr. Bromley, Mr. Baker and Mr. Neumeyer?

A At the time I appeared before the Grand Jury, I didn't recall the meeting out there. I didn't remember it, but I wasn't asked about it. I was only asked about an initial meeting. If they would have asked me about the meeting, I probably would have refreshed my memory and I would have remembered.

Q You say you didn't remember that meeting when you were before the Grand Jury?

A No, I did not.

Q Although you were asked about any meeting in which you were a participant with Mr. Baker and Mr. Bromley, weren't you?

MR. MORGAN: I object. There is no such question.

THE COURT: That is what the lawsuit is all about -- what those questions mean.

BY MR. LYNCH:

Q In any event, Mr. Jones, what I am now asking you is between the time that you appeared before the Grand Jury and spoke to Mrs. Kaufman, and the time you called Mr. Bromley the following Monday, had you refreshed your recollection about the meeting out in Las Vegas when Mr. Baker, Mr. Bromley and Mr. Neumeyer were present?

A To the best of my recollection no.

Q May I have just a moment? Do you recall talking, you have seen the transcript of the telephone call that took place between you and Mr. Bromley on the early morning of March 23rd, and the evening of the 22nd, when you called back. You have seen that, haven't you?

A Yes, I have.

THE COURT: Let me get that. You are talking about 2.

MR. LYNCH: 2, yes, your Honor.

MR. MORGAN: I am not going to object to this point, your Honor, but I would observe that going into the substance of this particular telephone conversation

beyond the very narrow limit that we went into earlier, it seems to me far beyond this hearing.

THE COURT: I have many questions before me, Mr. Morgan. You may proceed, Mr. Lynch.

BY MR. LYNCH:

Q Referring to page 9 of that, Mr. Jones, Mr. Bromley at line two refers to -- that he had a friend out in Vegas and she sort of went before the Grand Jury and she told them that I came up here and took care of the business there with you in your office. Remember that Sunday morning you called me out and you said, "Yes."

And, he said, "And she has already told them all of that." And Mr. Jones says, "You and I met out here." and Mr. Bromley says, "Yes." And Mr. Jones says, "So, she knows that you and I, you know, I didn't mention the meeting out here."

Now, you remembered the meeting at that point, didn't you?

A I was beginning to remember the meeting.

Q I see.

Q You were just at this point beginning to remember the meeting?

A Pardon.

Q You were at this point just beginning to remember the meeting?

A Yes.

Q And, Mr. Bromley says at line 13, "Uh huh." And you then said, "You know because you know I knew that was a delicate situation with you." And, Mr. Bromley said, "Yes, it was." Then you said, "So, I just said we met in Washington, D. C. They didn't ask me if we ever met out there."

A That is correct.

Q Are you saying now that you did or did not remember at the time you appeared before the Grand Jury, the meeting in Las Vegas on April, 19, 1963, after the Cannon Testimonial Dinner.

A At the time I appeared before the Grand Jury, I remembered that the first meeting we had was at the Capitol in Bobby Baker's office.

Q Did you remember the meeting with Bobby Baker, and with Neumeyer and with Bromley out in Las Vegas?

A At the time I appeared before the Grand Jury I didn't remember that meeting.

Q When you spoke to Mr. Bromley you said you didn't mention that meeting, because you knew it was a

delicate situation with him.

THE COURT: And, they didn't ask him about it. He testified ~~that~~ that he didn't have it in mind before when he was before the Grand Jury. It came to him as he began to think about these matters. It is clear he knew about it at the time of that conversation.

BY MR. LYNCH:

Q You have read Exhibit 2, haven't you, Mr. Jones.

A What is exhibit 2?

Q The one in front of you.

A Yes, I have read it.

Q Is there any addition or deletion or explanation that you would like to make in connection to that exhibit.

MR. MORGAN: Objection.

THE COURT: Objection sustained.

BY MR. LYNCH:

Q Is that exhibit complete -- the complete conversation?

THE COURT: That is a fair question if he remembers.

BY MR. LYNCH:

Q If you remember.

A I don't recall. I have no recollection.

Q Do you remember saying in the course of this conversation anything that is not in the exhibit?

A No, I do not.

Q Do I undersatnd you to say that Mr. Bromley initiated the suggestion that you fellows should get together?

A Yes, that is correct.

Q And, --

A To the best of my recollection, the first mention was made of any sort of a meeting is covered here in this memorandum.

Q That is what I thought. Is there anything else in this transcript that was referred to about getting together?

A In this conversation we were discussing the correspondence and so forth and I did ask him if he was going to be out west.

Q Yes.

A But, I had in mind delivering the documents to him.

Q Not getting together to talk to him about what the conversations were.

A No, I think that is quite apparent from the



transcript, but in the same conversation he talks about getting together.

Q Yes, after you mentioned -- asked him if he was going to be out on the West Coast.

A Yes, but further conversation shows that I had reference only to the documents.

Q Showing you Exhibit 7, Mr. Jones or a copy rather of Exhibit 7, is -- that refers to several phone calls including several that were made to you. I gather you have read them in the course of the proceedings here?

A Yes, I have.

Q Is there anything --

A These are the phone calls that were --

Q March 24th and 25th.

A That were monitored?

Q That is right. Have you read those? Have you read the transcript?

A Yes.

Q Now, in connection with the telephone calls that were made to you in the course of those monitorings, was anything said that you now recall that is not reflected in those transcripts?

A I really don't know. I don't recall anything

that was said that is not in the transcript.

Q You don't recall anything said that isn't in the transcript?

A That is right.

Q Showing you a copy of EXhibit 4, which has been referred to in the course of these hearings, have you read that in the course of the proceedings here?

A Yes, I have.

Q Are there things that you recall that is not reflected --

THE COURT: Now, Mr. Lynch. This is so obviously an incomplete record of the conversation. What you are really asking him to do is tell you what occurred in the conversation. That seems to me to be clearly discovery on your part. This is most incomplete.

MR. LYNCH: I thought we might be able to complete the transcript at this point.

THE COURT: I am not going to permit that. If there is some specific subject matter that you wish to direct his attention to, I will consider that.

BY MR. LYNCH: Let me ask you this. After the call in the early morning of the 23rd, the transcript of which you have already seen, you did call Mr. Bromley

from Las Vegas, did you mpt?

A Yes, I did.

Q And, you did tell him to set up the meeting for the tailend of that week.

A I did not.

Q You did not?

A No.

Q What did you tell him?

A I have already testified to that hear.

I testified I called him back concerning the documentations, particularly the 1099's and I talked to him about that. I told him everything seemed to be in order and there was a second 1099 sent to him and with that he told me he would like to meet me and asked me if I would come to Washington.

Q Why was it necessary to call him. I thought you agreed the night before simply to send him the document.

A No, I told him in the conversation the night before that this particular thing I would look into. I said, "I will look about that." I also told him that I wanted to be helpful, but I didn't want to be involved and there were several things -- these things were

strange to me. That is why I called him back.

Q Let me ask you this. When Mr. Bromley was retained was it for a period of time or was it indefinite?

A My recollection is that it was an indefinite time.

Q In fact, isn't it supposed to be that he was supposed to be paid \$10,000 in monthly installments?

A That isn't my recollection.

Q You were there at the time -- at the meeting -- The meeting that Mr. Bromley refers to as having taken place in Las Vegas and the meeting you say also took place in Washington.

A Yes, It was there at the meeting

Q Now, don't you recall the sum of \$10,000 being mentioned?

A I have seen it a number of times since, but that wasn't my recollection. My recollection was that it was for an indefinite period of time.

Q Who did you tell in your First Western Financial or whoever you did speak to, about the retention of Mr. Bromley?

A I told no one.

Q No one?

A No one.

Q How about Mr. Neumeyer?

A Mr. Neumeyer was present and heard the conversation. He is the one that -- he was present.

Q Mr. Neumeyer was agreeable?

A Mr. Neumeyer is the one that made the arrangements. I talked to no one in First Western concerning this.

Q What do you mean by made the arrangements? --

A To the best of my recollection he told Mr. Bromley to send in the invoice each month and after that conversation I had nothing to do with it.

Q Mr. Baker was there at the time this was said?

A Mr. Baker was present.

THE COURT: Are you trying, Mr. Lynch, to develop the close lawyer client relation that existed between this witness and Mr. Bromley.

MR. LYNCH: This witness so far as I know, your Honor --

THE COURT: You are developing a story of a lawyer-client relationship between this witness and Mr. Bromley. Is that part of your position on the motion?

MR. LYNCH: No.

THE COURT: Well, what is it that you are

directing this to now that relates to the motion.

MR. LYNCH: That relates to the motion.

THE COURT: As opposed to what it may relate to in any other way, in so far as I can see its materiality as to the motion.

MR. LYNCH: Well, in so far as the motion, the papers involved in the motion also relate to whether or not Mr. Jones was attempting to influence Mr. Bromley to tell a particular story that Mr. Jones had told to the Grand Jury.

I think it may be pertinent to the development of the hearing to go into this story as it was originally as Mr. Jones knows it originally.

THE COURT: Let me ask you this. You have touched on something that I am anxious to understand. This was one reason I was anxious to have you gentlemen argue before me this afternoon.

Is it your position that your right to eavesdrop on these conversations is different if you have evidence that Mr. Jones was attempting to influence Bromley's testimony, or is it your position that you have a right to eavesdrop on anybody you choose as long as that person says it is all right. Those are two different things

MR. LYNCH: Yes, I agree. In arguing it we would simply say that the eavesdropping was not idle eavesdropping simply because we had consent to eavesdropping, but we also had reason to believe --

THE COURT: Would it make any difference?

MR. LYNCH: Pardon.

THE COURT: Would it make any difference?

MR. LYNCH: Legally, I am not sure that ~~it~~ would, your Honor. I think -- I don't think that that is a criterion that the Courts would necessarily say make the difference between proper or improper. However, it is a factor that a Judge may take into consideration in weighing what was done and the propriety of it.

THE COURT: In other words, you would be urging on me that if I was not receptive to the notion that you had sort of a right to listen in any time you wanted to, when one person in the conversation agreed to it, which is your initial position, I take it; that you had cause here to inquire because the facts known to you were sufficient to suggest that Mr. Jones was attempting to influence the Grand Jury witness.

MR. LYNCH: Yes, your Honor.

THE COURT: And, you would like me to make finding on that issue as part of the disposition.

MR. LYNCH: Well, I suppose so, if you retreat or if you do not accept our position that given consent, there is no violation of any statute nor is is a constitutional problem.

That is to say it is not a violation of 605 to listen in on the conversation -- that eavesdropping part, nor is it a constitutional problem. Therefore, theoretically at least, we could had we the man power or the facilities available and the person truly consented eavesdrop nillie-willie on a person's conversation.

THE COURT: And, you would say that your position would be that if I felt that to justify the eavesdropping, you have to have some degree of cause to suspect this was impropriety involved in the telephone calls from Mr. Jones to Mr. Bromley, that I should take into account also the extent to which the government was inducing statements from Mr. Jones as opposed to listening to statements from Mr. Jones. Is that a factor?

MR. LYNCH: It is a factor in so far as your question arrises and you have some problem in equating this with some sort of entrapment.



THE COURT: I have very great problem with it -- difficulty of listening in on someone who had been instructed by the government to lie. I mean that presents at least to me perhaps just a threshold difficulty.

MR. LYNCH: Well, I suppose any -- let's take the most common example, a government witness or a government agent posing as a narcotics peddler and he gets on the telephone and negotiates a narcotics transaction with a distributor of some sort. He is lying. He is posing as something he is not. He is using deception in order to carry out if you will, the violation of the law.

I say that is no consideration at all in determination of whether or not as a matter of law the overhearing, if you are assuming according to my hypothetical devices placed on the phone, whether or not that overhearing is proper. Just as in Lopez, the agent of the government was posing as a corrupted agent and talking with the person who was making the bribe offer as if he was going to take the bribe offer at a time when it was perfectly clear that all he was doing was eliciting admissions and statements by the person he is talking to to substantiate the fact that he was and had been offered a bribe. I say the fact that deception is employed

is no factor --

THE COURT: We have gotten more deeply in to this point than I intended to go. I will in view of your position that your sort of second ground is that you had reasonable cause to believe that Mr. Jones was attempting to tamper with a witness before the Grand Jury. I will permit you to continue the examination. I think we had probably better adjourn now. It is a little past 12:30, and take this up more this afternoon.

MR. LYNCH: Very well.

THE COURT: I take it you gentlemen will be in a position to discuss these particular matters with me. Is this the only witness you will have, Mr. Morgan?

MR. MORGAN: Yes, your Honor. If I may get into evidence which I want some of these certified materials of the FCC, I want our record to show.

THE COURT: I understand. There is no problem.

MR. LYNCH: No problem.

THE COURT: Everybody realizing those are correct. The question is what they mean legally.

MR. LYNCH: Right.

THE COURT: After you finish with Mr. Jones, I do want to sort of get the contentions of the parties on

these overhearings and, we will do that this afternoon.

We will have time I imagine. Very well.

(The lunch recess was taken.)

AFTERNOON SESSION

1:45 p.m.

THE COURT: You may proceed, Mr. Lynch.

Whereupon,

CLIFFORD JONES

the witness on the stand at time of recess, resumed the stand and testified further as follows:

CROSS-EXAMINATION (Continued)

BY MR. LYNCH:

Q As I understand your testimony, Mr. Jones, you initially talked to Mr. Bromley in Washington, D. C. about retaining him and then the deal was arranged finally out in Las Vegas? Is that correct?

A That is correct. I had no authority to employ anyone or hire anyone.

Q And when the deal was finally arranged out in Las Vegas, Mr. Baker was there as well as Mr. Neumeyer and Mr. Bromley? Is that correct?

A That is correct.

Q In the telephone call of March 22, Mr. Bromley denied any recollection of that Washington, D. C. meeting? Isn't that correct?

A I think that is correct, yes.

Q If you need these transcripts --

MR. LYNCH: May we furnish him with Exhibit 2?

THE COURT: He has it before him, I believe.

BY MR. LYNCH:

Q Why was Mr. Baker there at the meeting out in Las Vegas?

A Mr. Baker was there, because he was a friend of Mr. Bromley and Mr. Baker and I had discussed it in Washington, D. C., the matter of retaining Mr. Bromley and had discussed it in his office.

Q In fact, Mr. Jones, wasn't the money Mr. Bromley was to be paid pursuant to this retainer for Mr. Baker rather than Mr. Bromley?

A It was not. It definitely was not.

THE COURT: That is the simple issue in the case.

BY MR. LYNCH:

Q In the course of your telephone conversation of March 22, referring you to page 7, Mr. Bromley was talking and he said: "I'm getting right disturbed about it, because I haven't talked with"-- And you interject, "Uh huh." --"our friend and I just don't know how this whole thing is going to be handled and it really has got me over a barrel."

Who was the "our friend" you think he was referring to?

A I think he was referring to Bobby Baker.

Q And you thought that that night also?

A I don't recall what I thought at that time. I don't recall.

Q In the course of that discussion that night, didn't you refer to one of the invoices that had been sent as being on someone else's stationery?

A Yes, I did.

Q Whose stationery was that?

A That was on the stationery of Tucker and Baker.

Q So you knew that?

A Yes. There was a duplicate on the stationery of Mr. Bromley and he already told me that he had a tax problem that he was concerned about.

Q When, later in that discussion on the evening of March 22 or early morning of March 23 --

A He had also already told me he had given some of the money to Bobby Baker and he had a tax problem.

Q He had told you this already, that the money had gone to Baker?

A Some of the money had gone to Mr. Baker.

THE COURT: That is what Mr. Jones testified to this morning.

BY MR. LYNCH:

Q That was in the telephone call early that evening?

A That was in the first conversation that I had with Mr. Bromley.

Q Was that your first knowledge that this money had ever gone to Mr. Baker?

A That was my first knowledge of it, or my first indication of it. I never knew it before that and never had the least idea it could be possible.

Q Referring you to Exhibit 4 --

THE COURT: Do you have Exhibit 4, Mrs. Harris? Please give it to the witness.

DEPUTY CLERK: Yes, Your Honor.

BY MR. LYNCH:

Q Referring you to page 4 of Exhibit 4, when you were discussing these matters with Mr. Baker and Mr. Bromley out at the Beverly Wilshire, didn't Bromley say, "You know damned good and well that money wasn't mine." And didn't you say, "It wasn't for Bobby. It was supposed to go for politics back there."

Did you say that?

A I don't think that is the whole text of it.

Q What else was said besides that?

A I believe what was said, "Part of it was supposed to go for politics."

Q And you knew that at that time, at the meeting at the Beverly Wilshire on March 26? Is that correct?

A Yes. That is, I knew that. Yes.

Q Didn't you know that also back in the early morning of March 23 that the money was supposed to go to Bobby for politics?

A It was not supposed to go to Bobby for politics.

Q What did you mean when you said, "It was supposed to go to Bobby for politics," on March 26?

A I didn't say that.

Q You didn't say that?

A I did not say that.

Q Who did say it?

A I don't know who said it, but I didn't say it.

Q Somebody in your presence said it, though? Is that correct?

A No. I think it is being misquoted. Where do you find that?

Q Page 4 of Exhibit 4, at the bottom of the page.

A Yes. It said, "It isn't for Bobby." That is me. Or, "It wasn't for Bobby." That is my statement.



Q "And it was supposed to go for politics back there."  
Isn't that your statement?

A I don't think that is all of my statement. I think the statement that I made was part of it was to go for politics.

Q Was supposed to go for politics?

A Perhaps that is correct.

Q And you knew that on March 26? Is that correct?

A March 26?

Q That is the date of this discussion out in the Beverly Wilshire.

A Yes.

Q And you knew that on March 23, didn't you?

A I knew that on March 23, but it was my impression if Wayne had given any money to politics that he would contact us before he gave it for politics.

Q Didn't you know that on March 17 --

THE COURT: Let him finish his answer, Mr. Lynch.

MR. LYNCH: All right.

THE WITNESS: Wayne Bromley was employed or hired by First Western as an attorney here in Washington, but I think that his own attorney really said what he was this morning when he referred to him as a lobbyist, because he

was an attorney-lobbyist and that is really what he was hired as was an attorney-lobbyist.

And whatever attorneys are supposed to do, or lobbyists, up there, such as take care of political matters, he was supposed to take care of. Whatever political donations he would have made should have been mentioned to us and we would have -- I believe the intention was to reimburse him.

But they were supposed to be within the legal confines of the law.

BY MR. LYNCH:

Q Is that your full answer?

A That is my answer, yes.

Q Did you know that on March 17, 1965, Mr. Jones?

A Yes, I knew it at that time.

Q And you were asked about conduit payments to Baker through Bromley during the course of that interrogation on March 17?

A I was, but it was never to be conduited through Bobby Baker.

THE COURT: That is the issue in your case.

THE WITNESS: In fact, Bobby Baker was not even on the Hill during the big part of these payments.

BY MR. LYNCH:

Q That is correct, isn't it, he left in October of 1963?

A He left in October of 1963.

THE COURT: How does this particular line of testimony that we have just developed relate to the Government's reason to believe when they initiated this series of over-hearings that this witness was attempting improperly to influence a Grand Jury witness?

Let me take it now with the inferences that you have suggested by your questions where you have gotten negative responses. How does that go on to that? What they knew, what the Government knew, when it started this surveillance was not anything that was in any of these surveillances?

MR. LYNCH: That is true, but what the Government knew when the surveillances of the 24, 25, and 26 went on was based upon an addition to what they knew from the records and Bromley's testimony, what transpired on the early morning of March 23.

THE COURT: Mr. Lynch, I must not be getting over to you and I don't mean to say that I have got any fix on it, because I haven't studied all the transcript, but what

I was particularly interested in, rightly or wrongly, was what the Government knew when they started this surveillance, what information they had that would justify them, had they gone to a Magistrate for the purpose of getting a warrant to show probable cause, what did they know.

And it isn't what is in these documents. That all came from the surveillance. What did they know at the time?

MR. LYNCH: Your Honor, I submit, had they gone to a Magistrate, for example, on March 26, then they would know not only what was in among these other things they knew as part of the Grand Jury investigation, but they would also know what happened on March 23, March 24, and March 25.

THE COURT: You have been questioning him, though, about a transcript, the transcripts of the overhearings.

MR. LYNCH: Because I have gotten a response that I think was contradicted by the transcript of the overhearing.

THE COURT: I will say it once again and then I am through. The Court is interested in knowing what reasonable/cause the United States had to start the initial overhearing which is justified on the basis of the obstruction of justice statute.

What did they have at that time to give them reasonable cause or probable cause -- whatever the standard is, I am not trying to state the standard -- to start this sequence of surveillance? The fact that Mr. Jones called an associate directly or indirectly through Dee Kaufman, or both, to advise him as to what he had said before the Grand Jury raises no inference of improper influence on a witness.

It is specifically permitted by the rules of criminal procedure.

MR. LYNCH: That is true, Your Honor. But when the story told by the witness or by the contact is diametrically opposed to the facts as the Government understands them to be and when it is made to a witness who is under subpoena, then I submit that the Government may feel that an approach is being made to the witness in order to get the witness to understand what has been said before the Grand Jury and to conform his story accordingly.

And I submit these are -- the transcript of the 23rd bears that out.

If I may address a question --

THE COURT: You may proceed.

BY MR. LYNCH:

Q Did you know that Mr. Bromley had already been

before the Grand Jury when you spoke to him on the 23rd, Mr. Jones?

A No. I did not know, except it has come out since that he had said he had been before it only to identify a check. I didn't ask him if he had been before the Grand Jury when I talked to him.

THE COURT: You didn't ask him whether he was going to go before the Grand Jury?

THE WITNESS: No.

THE COURT: And Mr. Bromley told him. It was Mr. Bromley that kept saying, "What is it you want me to say?" I am going --

MR. LYNCH: He didn't say it in precisely those words. I agree the import of it is that.

THE COURT: It was pretty close.

THE WITNESS: Yes. He said that in the transcribed thing.

BY MR. LYNCH:

Q Why were you so anxious that Dee Kaufman would advise Mr. Bromley exactly what you had said to the Grand Jury?

A I think I have answered that. It has been asked and answered.

MR. MORGAN: I object.

THE COURT: Sustained.

We have been over that twice now.

BY MR. LYNCH:

Q In fact, wasn't it to conform his testimony to yours?

A It was not.

Q Referring you to Exhibit 2, Mr. Bromley at the bottom on page 15, didn't Bromley tell you he had no recollection of any Washington, D. C. meeting?

A He said that?

Q He said that.

A As far as I recall, he said that.

Q Then you told him, "We made final arrangements out here."

A That is the truth.

Q That is what you said?

A Yes, that is true.

Q And referring you to line 14, Mr. Jones, on page

16 --

MR. MORGAN: Do you have that exhibit, Mr. Jones?

THE COURT: I believe you have it, Mr. Jones.

THE WITNESS: What is the line and page?

MR. LYNCH: Line 14 on page 16.

THE WITNESS: Yes. I mean, what is your question?

BY MR. LYNCH:

Q My question is -- I have to preliminarily -- I want to ask you what you meant. You say, "Yes, that is even better." In other words, the first conversation was held there referring to Washington, D. C.? Is that correct?

A That is correct.

Q "And then you came out here" -- referring to Las Vegas? Is that right?

A Yes.

Q "And we rode around and went to my office and made the deal."

A All of that is correct.

Q Mr. Bromley said, "Uh huh." Mr. Jones: "There was nobody present but the two of us, was there? Just the two of us." Then Mr. Bromley said, "Cliff, are you asking me or are you telling me?" And you said, "I am telling you." Didn't you?

A Yes.

Q So you were telling him the story?

A I was telling him what was true.

Q You were telling him the story that there were just



two present when the deal was finalized?

A Yes, but that had reference to the first conversation that he had testified to, not to the meeting in Las Vegas.

Q So you weren't interested in what his recollection was of that? You were telling him what had happened?

A Yes. I was reminding him of it. At another place in the transcript you will find that I tell him that he has to rely upon his own recollection, that I am not going to supply anything.

Q Were you attempting to protect Baker during this period of time?

A No, I wasn't trying to protect Baker at all. In fact, the transcript shows that I didn't even want to talk to Baker.

Q Why was that?

A I just think -- I have testified to it before -- I didn't think it was a good idea. There had been a mass of publicity.

Q Why did Bromley suggest you get together with Mr. Baker?

A I don't know. That would have to come out of Mr. Bromley's mind.

Q You didn't ask him, in the course of this conversation, "What in the world does Baker have to do with this?"

A I said, "I don't think that is a good idea."

Q But the reason was because of the publicity generated by Baker and the questions you thought the Grand Jury might ask him about contacts with Baker?

A I don't want to have a personal argument with you about this. If you will ask me a specific question, I will endeavor to answer it. I didn't realize when this conversation was going on -- I was just trying to restate the truth as I knew it, according to my recollection.

Q But you weren't asking Mr. Bromley his recollection? You were telling him what had happened? Is that correct?

A I didn't realize it, but I was being baited at that time. I didn't realize it until I heard the testimony here that there were questions being propounded to me that were suggested by the Government to try to get me to say something that wasn't right.

Q What wasn't right?

A I don't know. They were trying to get me to say something apparently.

Q They were trying to find out what you knew about the Baker situation?

THE COURT: Who was?

MR. LYNCH: The Government.

Isn't that correct, Mr. Jones?

This is what Mr. Jones has told me.

THE COURT: That is not what I heard his testimony to be.

Mr. Lynch, I again ask you what basis did the Government have at the time it started this surveillance to believe that this witness was tampering with the Grand Jury in violation of the statute?

Now you are continuing to concern yourself with a conversation that you intercepted. And I am asking you: What did you know before you undertook to intercept?

BY MR. LYNCH:

Q Mr. Jones --

THE COURT: That must be clear to you, Mr. Lynch.

MR. LYNCH: All right, Your Honor.

BY MR. LYNCH:

Q Mr. Neumeyer during this period of time in March of 1965 was out of the country, wasn't he, sir?

A To the best of my recollection, he was.

Q And didn't you fly over to Europe and meet with him?

A I didn't fly over to Europe to meet with him. I was in Europe on other business and I was within 16 miles of where he was staying and I did go see him. We had been friends and business associates for a long time. He had become ill.

He had cancer, had an operation, and had retired. And in his retirement he was traveling and was in Europe and had been there for several months. I was in Monte Carlo on business and I drove over to Nice and we spent about an hour together.

Q When was that?

A I don't recall the exact date. Sometime --

Q Did you talk to him about your Grand Jury appearance?

MR. MORGAN: Let him answer the question, if he can.

BY MR. LYNCH:

Q If you can.

A The time? It seems to me it was sometime in the early part of the summer.

Q Summertime?

A I believe so. I don't recall exactly.

Q After these interceptions took place?

A It was after I had been before the Grand Jury, yes.

Q Was it after, do you recall, these interceptions took place? Was it in March?

A I didn't know there had been any interception at that time.

Q Now you do.

A Yes, it was after the interceptions had taken place. Yes.

Q All right. Did you, incidentally, talk to Mr. Neumeier about your Grand Jury testimony?

A I talked to him but very briefly about it. Not in as much detail, I don't believe at all, as I had talked to Wayne Bromley.

THE COURT: Let's stop --

THE WITNESS: Very briefly.

THE COURT: Let's stop for a moment, Mr. Lynch.

What has that got to do with the motion to suppress? He went to talk to a man after the intercepts were all over and you are asking him concerning whether he discussed his Grand Jury testimony. That might be relevant on a trial. It might be a matter of great interest to you as an individual.

But what has it got to do with the motion? I am

asking you this not to stop you but to understand what the Government is doing on this motion. What has it got to do with it? I want a statement from you as to what that has to do.

MR. LYNCH: Your Honor, I know that Mr. Jones went to Europe and spoke to Mr. Neumeyer. My recollection is hazy as to when it happened. If it happened in the summer, and I have no reason to dispute Mr. Jones in this respect, why then it has no relation to these overhearings.

If it happened before the overhearings, again, this may be an indicator of the fact of an attempt to contact a potential witness to the same transaction.

THE COURT: All right. Now I will ask you my question again: I said -- What did the Government know at the time it commenced the intercepts? Not what does the Government now determine by some kind of discovery through this motion about what this man did after the intercepts are all over.

Surely, as a lawyer, you see the difference.

MR. LYNCH: I understand, Your Honor, but I don't think I can develop from this witness what the Government knew about --

THE COURT: I don't think you can either.

MR. LYNCH: -- about the situation before the intercepts took place.

THE COURT: You have sort of avoided that. But you could ask him about his first conversation with Mr. Bromley, the one that was not intercepted, the one concerning which we have had testimony from other witnesses.

I want to keep this hearing directed to the motion and not to the other interests of the Government.

MR. LYNCH: I am willing --

THE COURT: I have given you great leeway and there have been no objections from the defense

MR. LYNCH: I will explore that area.

BY MR. LYNCH:

Q When did this first meeting that you said took place take place?

A As I recall, either in December or the early part of January -- either December of 1962 or the early part of January 1963.

Q And where did that take place?

A It took place in Bobby Baker's office in the Capitol Building here in Washington, D. C.

Q And who was there?

A Wayne Bromley and I were there.

Q And anyone else?

A Well, Carole Tyler was -- I believe she was in the outer office.

Q Carole Tyler is deceased?

A Yes. But she was not in on the conversation.

Q How about Baker? Was he in the vicinity?

A He was not there at the time, but he came back to the office. This is the best of my recollection. He came back to the office and we talked and we didn't talk about this. Wayne left and then Bobby and I discussed it. So I talked to both Bromley and Baker in the Capitol.

Q What interest would Baker have in the retention of Bromley, if you can tell us?

A Well, they were friends.

Q Did you discuss the amount of money you were going to pay Bromley with Baker?

A I don't believe so. Not at that time.

Q Did you discuss the length of the retention that you were going to have with Bromley with Baker?

A Not that I recall.

Q Did you discuss the reason why you were retaining Bromley as distinguished from anyone else with Mr. Baker?

A Yes, we discussed that.



Q What was that discussion?

A That discussion had to do with the fact that he was the only lawyer-lobbyist that I was acquainted with. I didn't discuss the hiring of him. I discussed the recommending that he be hired.

Q You knew him as a lobbyist at that time?

A I knew he had worked on the Hill. I had known him for several years as a lawyer and that type of lawyer was a lobbyist of some sort.

Q Do you recall when you first came to meet Mr. Bromley?

A I didn't come to meet Mr. Bromley.

Q Did you meet him in some manner?

A Yes.

Q What was the occasion for your meeting?

A The occasion was on many occasions or quite a number of occasions I had met with Wayne Bromley in Bobby Baker's office when I was in Washington. I would ordinarily go up to the Capitol. There I would see -- usually see -- my Senators, and then I would go to Bobby's office and wait and talk to Bobby Baker.

And on many of those occasions Wayne Bromley would be in the office and he and I would sit and talk until Bobby came.

Q In the course of those discussions with Bromley, did you become aware of what interests he represented as a lobbyist?

A I knew that he represented one of the coal companies, or the coal association. I knew that he represented that, that that was one of his retainers.

Q You wanted him to represent you as a lobbyist for the savings and loan association, or for First Western Financial, or for both?

A It was for the -- kind of both, I believe. We didn't think of them as necessarily broken down. It was kind of one entity, as far as we were concerned, except there were various facets of it.

Q Did he have any expertise, that you could gather, in the savings and loan association business, financial areas?

A No.

Q I believe you have testified as far as the retention of him goes it was indefinite for no particular time or for no particular amount of money?

A That is to the best of my recollection on the subject.

Q How about cessation of that retention? What did you have to do with the ending of the association Bromley

had with First Western Financial, or you, or whatever interests he represented?

A I don't remember exactly. This is, again, to the best of my recollection. My recollection is that in 1964 I received a call from a Mr. Francis and he asked me what I knew about this Bromley retainer. He said, "We have been paying it quite a long time."

And, incidentally, this is the first time that I had talked to anyone in First Western about the payment or what was being done as far as paying was concerned. And he said, "We stopped paying it, but," he said, "we are still getting invoices."

And I told him at that time, I said, "As far as I remember, it is a matter to be continued in an indefinite period of time until it is cancelled." And he said, "O.K." And then I found out later that it had been shortly thereafter cancelled or terminated.

Q Didn't Mr. Francis tell you that it had been terminated initially and he had continued receiving invoices?

A To the best of my recollection, he said they had paid for a certain length of time and had terminated it and he was still getting --

Q How long did he get paid?

A I don't recall.

Q Didn't he tell you they had paid the 10 months?

A It is quite possible.

Q And he understood the 10 months was the period of retention?

A I don't recall, but it is quite possible. Yes.

Q Then didn't you tell him nonetheless to continue making the payments, pursuant to the invoices that were received?

A I didn't tell him that. I said it was my understanding that it was for an indefinite period of time and that was as far as I remember the conversation.

Q Did you talk to Mr. Baker at all after you talked to Mr. Francis?

A No, I did not. I don't recall.

Q Did you talk to him personally, face to face, sometime around March or April of 1964?

A I don't recall. I remember seeing Mr. Baker maybe one time in that period of time.

Q Did you talk to Mr. Bromley when you were advised by Mr. Francis that the arrangement had been terminated?

A I don't recall. It seems as though I might have talked to Bromley.

Q Face to face or on the telephone?

A No, on the telephone.

Q What was that conversation?

A I am not certain. I don't remember.

Q In fact, didn't you receive a telephone call from Baker relating to the termination of that retention agreement?

A I don't know. It is possible. I don't have any recollection of it.

Q Didn't Baker ask you to continue the payments for several months thereafter?

A I don't have any recollection of it. I do try to remember things.

Q Is it that you don't remember or that it couldn't have happened or it may have happened? Does that refresh your recollection at all?

A It could have happened. I just don't have any recollection of it. I am not saying that it did; I am not saying that it didn't.

Q And then, in any event, after the agreement was terminated after 10 months and \$10,000 had/paid, further payments were made?

A That is my understanding. Yes, that is correct.

Q And one of the first invoices that came after the

Payments were continued came from the firm of Tucker and Baker? Are you aware of that?

A I am aware of it now, but I wasn't aware of it until after the Grand Jury, until after I had testified before the Grand Jury. In fact, I became aware of it when the papers were delivered to me at my office, I believe.

Q After you had testified before the Grand Jury?

A That is right.

Q You didn't at that time attempt to get hold of anybody in the Department of Justice to advise them of this fact, did you?

A When I received it and opened it up, I was sitting in the presence of two FBI men and I handed it right to them. I opened the package and went through it and saw that and handed it to them. I certainly didn't try to conceal it from them.

I handed it right to the FBI, right at that moment.

Q The payments continued for several months thereafter. Do you know what caused the final termination of those payments?

A No, I do not.

Q Did you cause it?

A Not that I remember. I have no recollection of it.

Q Do you think you would recollect if you did terminate them?

A I think that I would. But I don't know for certain.

Q Did you ever discuss the termination with Mr. Neumeyer or, to your recollection, anyone in the First Western Financial or the First Savings and Loan?

A Mr. Neumeyer had retired at that time and I don't recall discussing it with anybody.

Q Were you aware that a letter had been sent from First Western Financial by Francis terminating Mr. Bromley's retainer?

A No, I was not aware of that.

Q Would these papers come to you in the ordinary course, Mr. Jones?

A They would not.

Q You were an officer of the First Western Financial at this time, were you not?

A I was an officer and I was a director, but that meant I attended a director's meeting ordinarily once a month and once in a while I walked by the First Western. I didn't have an office there.

Q You were the Senior Executive Vice President or the Senior Vice President, something of that nature?

A I was Senior Vice President of First Western Financial.

Q And a director?

A And a director.

Q Did you have any operational activities in connection with First Western?

A None whatsoever. I attended a directors' meeting whenever there was one held and that is all.

Q Did you have many long distance telephone calls from or to Bobby Baker during the period of early 1964?

A I don't recall.

THE COURT: This line of examination has been going on for a few minutes. It has no bearing on what the Government knew at the time they started the first electronic surveillance. This is an interesting discussion of what this man knew or didn't know, or did do or didn't do, prior to your surveillance.

But the question in the Court's mind is: What did the Government know that gave it probable cause to eavesdrop? And what this man had done or didn't do you are now finding out by examining doesn't bear on that, does it, Mr. Lynch?



MR. LYNCH: It does to some extent, Your Honor.

THE COURT: I am having difficulty seeing that, see?

MR. LYNCH: Mr. Bromley's story was that the meeting that he had with Mr. Jones, with Mr. Baker, and with Mr. Neumeyer, Mr. Jones told him that he was going to send \$10,000 to Mr. Baker by way of Mr. Bromley. And these would be paid by sending of invoices monthly.

Now 10 invoices were sent. Then there was a termination. And then they were renewed. Part of the arrangement, according to Mr. Bromley's testimony, was, in addition to the \$10,000 which he would conduit off to Baker, he would get a certain amount of money, according to his tax bracket in order to compensate him for the amount that he was going to have to report on his tax return.

And this, again, is a fact that was know, I believe, at the time that the initiation of these --

THE COURT: Known to whom?

MR. LYNCH: Known to the Government.

THE COURT: This defendant doesn't develop that.

This testimony is testimony from Mr. Jones as to what he did. It doesn't have anything to do with what the Government knew, that I am aware of. When you refer to Mr. Bromley's testimony, I take it you are referring to the testimony

that the Government determined to believe and not his perjured testimony.

You had both kinds of testimony from him.

MR. LYNCH: That is true.

THE COURT: So that I was rather interested in what the Government knew to support the request to the Federal Bureau of Investigation for surveillance of this man under the obstructing justice statute which is the basis from which you --

MR. LYNCH: Your Honor, this gentleman can't give us very much information at all.

THE COURT: I didn't think he could and I have therefore suggested it was not a very fruitful examination.

MR. LYNCH: Your Honor, I regret that you view it that way, but I felt that it was my duty to ask him some questions in view of the direct examination.

THE COURT: And you may continue. There is no objection from defense counsel. But I am trying to indicate to you what it is that I am anxious to have any light thrown on that you can. And I simply do this so you would know what was in my mind.

MR. LYNCH: Surely.

THE COURT: You may proceed.

MR. LYNCH: May I have a moment, Your Honor?

THE COURT: Certainly.

MR. LYNCH: I have no further questions.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: I think, Your Honor, I have a few questions I would like to ask on this line of interrogation.

REDIRECT EXAMINATION

BY MR. MORGAN:

Q Mr. Jones, why did you contact Mr. Bromley in Mr. Baker's office and indicate that you had in mind suggesting him as an attorney for First Western Financial?

A Late in the year 1962 Mr. Baker mentioned to me that Senator Kerr expected the western savings and loans to contribute \$100,000 toward the Senate Campaign Committee Fund. And he asked me at that time, he said, "Do you think First Western will contribute?"

And I said, "Well, I don't know, but they usually try to do their part in all matters." I said, "I suppose that they will try to do their part in this." Subsequent to that time, I learned that there had been a contact made from the State of California in which First Western had been asked to contribute cash to the campaign fund, to the Senate Campaign Fund.

First Western refused to have anything to do with this

as they, from the discussions, felt that since the request was made that it be in cash, that it had to be done that way, that it was an illegal thing and there would be no way to explain or justify a donation in cash.

Subsequent to that time, I was back in Washington, D. C. and again I saw Bobby Baker and Bobby mentioned to me how furious Senator Kerr was over -- and I guess the committee, too -- the refusal of First Western to participate in any way in that matter.

Among other things, he said, "You fellows are really in the doghouse." He suggested -- whether it was at that meeting -- not a meeting, that time or at a subsequent time, he suggested that since we were so much in the doghouse and since we did have things important to us that were before the legislature or the Congress, that we needed representation back here in the form of somebody to watch out for us and take care of our -- any legislation that might be affecting us up there.

And I believe at that time -- and the politics involved. He strongly urged that on me. And this was before I met with him, Bromley, in the office. And when I met with Bromley in the office, I discussed it then with Wayne --

Q Was this out of Baker's presence?

A This was out of Baker's presence. To my recollection, this was completely out of Baker's presence. And told him that I had in mind recommending to First Western that they hire him as an attorney here to look after our problems here in Washington up on the Hill.

And he seemed to be pleased about it and after that he had gone. I don't know exactly the sequence. But I believe Bobby came back and Wayne left and I discussed it with Bobby and Bobby said that he was very pleased about it and he thought that Wayne would do a good job for us back here and take care of the things we needed taken care of.

Q How did it come about, Mr. Jones, as you recall, that there was a subsequent meeting at which Mr. Neumeyer did hire Mr. Bromley?

A Well, after this conversation, some months passed. There was nothing immediate. Some months had passed, because I was back in Las Vegas and I don't know why, but there was a period there that I didn't come to Washington from the first few days in January until this other meeting.

I received a call from Wayne Bromley which I have since learned was made from the airport in which Wayne Bromley told me that he was coming to Las Vegas and in which he asked me to make reservations for him at the hotel, the Thunderbird

Hotel, for himself and two young ladies.

And it is my recollection that in that conversation we discussed the fact of setting up a meeting in Las Vegas with Mr. Neumeyer, the President of the Association, to discuss his retention as a lawyer. I made the reservations and I set up the appointment.

He arrived in Las Vegas on a special airplane that came out for the Cannon dinner.

Q That is Senator Cannon?

A Senator Cannon's dinner in which I was the chairman to handle the VIP's. I was at the airport to meet some of those people. And there I met Wayne and the two girls. And to the best of my recollection, after I had finished my duties at the airport, I drove them to the hotel.

Q That is the Thunderbird Hotel?

A That is the Thunderbird Hotel.

Q And did you set up a meeting with Mr. Neumeyer?

A I did.

Q And I think you were asked the question, if not I will ask it: Why was Mr. Baker at that meeting?

A He was in town also. He was ostensibly there to attend the Cannon dinner and I don't know -- I can't recall exactly, but I think that he called me and I told him that

I had had a call from Wayne Bromley and that I had set up a meeting with Mr. Neumeyer for Sunday, because Mr. Neumeyer was also involved with the Cannon dinner.

And so he knew there was a meeting and he came.

Q Was this the first occasion Mr. Neumeyer had ever met Mr. Baker?

A Yes, that is my impression that it was the first time he had met him, although -- There is a possibility that he met him the night before at the Cannon dinner. Now Mr. Baker -- I don't believe he attended the Cannon dinner. He came and was at the door and he met people there and talked to people.

He was at the door, but he didn't stay for the dinner and the speeches, I don't believe, because they were going to introduce him, as I recall and we didn't find him to introduce him during the dinner.

MR. MORGAN: I believe that is all, Your Honor.

**RECROSS-EXAMINATION**

BY MR. LYNCH:

Q Incidentally, Mr. Jones, when Baker first broached this subject to you about financial contributions, did he suggest how much? That is, how much First Western Financial would be expected to contribute?



A I believe that there was some discussion.

Q How much was suggested?

A I believe it was 10 percent of \$200,000.

Q How was that figure arrived at? Do you know?

A I don't know. I didn't arrive at it.

Q That is \$20,000?

A That is correct.

Q And when did this take place?

A This was in 1962.

Q What part of that year?

A I don't -- It would have been in the fall of the year.

Q You can't pinpoint the month exactly, can you, or can you?

A It is my impression, my recollection, that it was prior to the general election of that year.

Q When you spoke to Mr. Bromley here in Washington, did you talk to him about your prior discussions with Baker and the fact that Baker had advised you that First Western Financial was in the doghouse -- as you put it?

A I don't -- No, I don't think I said that to Mr. Bromley. I don't recall saying it to him.

Q Did you discuss with Mr. Bromley the overture that



Mr. Baker had made to you about contributing 10 percent of \$200,000?

A I did not, as I recall. I don't recall doing that.

Q You don't recall whether you did or not?

A I don't recall whether I did or not.

Q You say Mr. Bromley, when he came out in connection with the testimonial dinner, called you from the airport? You said you received a call from Mr. Bromley which you subsequently ascertained --

THE COURT: He didn't say it was the Las Vegas Airport.

THE WITNESS: I said I had learned later that it came from the airport which was the Washington, D. C. Airport, or wherever the plane took off from.

BY MR. LYNCH:

Q I see. You learned that how?

A I think I learned it through a memorandum that is in Mr. Morgan's office where they interviewed one of the girls and she told him about the phone call and that is how I learned that is from that memorandum where she was interviewed and she said -- I am of the impression she said where the telephone call came from.

Q When you went to the airport to meet Mr. Bromley,

was Mr. Baker there also?

A I did not go to the airport to meet Mr. Bromley.

THE COURT: He didn't testify to that, Mr. Lynch. He said he was in charge of the VIP's, that he had occasion to be at the airport in connection with that, and he was there when Mr. Bromley came in, as I understand his testimony.

THE WITNESS: That is correct.

BY MR. LYNCH:

Q Did you see Mr. Baker there at that time?

A I didn't see Mr. Baker there. As far as I know, he wasn't there.

MR. LYNCH: I have no further questions.

MR. MORGAN: One last question.

#### REDIRECT EXAMINATION

BY MR. MORGAN:

Q Mr. Jones, did consideration of the total amount involved in the payments to Bromley by First Financial loom large as a relative factor in this company?

A No, it did not. The corporation had assets of close to \$400,000 and that particular year we had over \$6-1/2 million in income after taxes.

MR. MORGAN: Thank you.

THE COURT: I guess you are through, Mr. Jones.

You may step down.

THE WITNESS: Thank you.

TELEPHONE CONVERSATION BETWEEN WAYNE BROMLEY  
AND CLIFFORD JONES, AT THE HOME OF MR. BROMLEY

THE CONVERSATION STARTED AT 12:15 A.M., EST,  
Tuesday, March 23, 1965.

1 MR. BROMLEY: Operator, my name is Bromley. I am  
2 calling from 365-3516. I would like to make a call to Clifford  
3 Jones at the Thunderbird Hotel in Las Vegas.

4 OPERATOR: Thank you. Hold the line a moment please.  
5 Good evening. The number for the Thunderbird Hotel.

6 INFORMATION: Thank you. The number is 735-4111.

7 MR. BROMLEY: 735- what?

8 OPERATOR: 4111.

9 MR. BROMLEY: 4111. O.K.

10 OPERATOR: Area Code 702.

11 MR. BROMLEY: Area Code 702.

12 OPERATOR NO. 2: Good evening. Hotel Thunderbird.

13 OPERATOR: Mr. Clifford Jones, please, long distance  
14 is calling.

15 OPERATOR NO. 2: He is not with the hotel any longer,  
16 operator. Can I page him for the party?

17 OPERATOR: Is he registered there?

18 OPERATOR NO. 2: He was an employee.

19 OPERATOR: Could you page him and see if he is there?

20 OPERATOR NO. 2: I will page him. His room doesn't  
21 answer. Operator?

22 OPERATOR: Yes.

23 OPERATOR NO. 2: He doesn't answer.

24 OPERATOR: Do you know his residence?

25 OPERATOR NO. 2: No, I don't.

1 MR. BROMLEY: Operator, would you mind trying again,  
2 please, and see maybe if you can reach him at home?

3 OPERATOR: All right.

4 INFORMATION: Good evening, Las Vegas information.

5 OPERATOR: Could I have a residence telephone for a  
6 Clifford Jones in Las Vegas?

7 INFORMATION: What is the name?

8 OPERATOR: Clifford Jones.

9 INFORMATION: Thank you. Can you hear me all right?

10 OPERATOR: Yes.

11 INFORMATION: The number is 878-9633.

12 OPERATOR: Thank you.

13 VOICE: Hello.

14 OPERATOR: Long distance calling Mr. Clifford Jones.

15 VOICE: You must have the wrong number.

16 OPERATOR: Is this 878-9633?

17 VOICE: No, it is 5623.

18 OPERATOR: I beg your pardon.

19 VOICE: Hello.

20 OPERATOR: Is this 878-9633?

21 VOICE: No, 9233.

22 OPERATOR: I am trying to reach 9633. I am sorry.

23 VOICE: That's O.K.

24 OPERATOR: I think that is what she said.

25 MR. BROMLEY: Yes, she did say 9633.

LADY'S VOICE: Hello.

OPERATOR: Is this 898-0633?

LADY'S VOICE: Yes.

OPERATOR: Long distance is calling Mr. Clifford Jones.

LADY'S VOICE: Just a moment.

MR. JONES: Hello.

OPERATOR: Mr. Clifford Jones?

MR. JONES: Yes.

MR. BROMLEY: Cliff, this is Wayne Bromley.

MR. JONES: Yes, Wayne.

MR. BROMLEY: I had company earlier when you called and I couldn't talk very well. Can you talk now?

MR. JONES: Yes. I don't know about this thing.

MR. BROMLEY: You told me a couple of things a while ago that sort of surprised me.

MR. JONES: Yes.

MR. BROMLEY: About last year.

MR. JONES: Yes.

MR. BROMLEY: I am getting ready to go to the well again and I thought all that had stopped a year before.

MR. JONES: Well, the dates were 1963 through 1964, to July, I believe.

MR. BROMLEY: So I got it all the way up to July?

MR. JONES: Yes. Didn't they send you a 1099? They

1 must have. They said they did. You know that tell you what  
2 you have had.

3 MR. BROMLEY: Yes.

4 MR. JONES: And it might be well for you to know if  
5 you didn't report it last year to get it all in.

6 MR. BROMLEY: Uh-huh.

7 MR. JONES: Would you like for me to send you a copy  
8 of those?

9 MR. BROMLEY: Yes, if you would please, I'd appreciate  
10 it. Could you send them to a different address, please, because  
11 you see I never see that stuff.

12 MR. JONES: Uh-huh. But all of them are endorsed by  
13 you.

14 MR. BROMLEY: Well, just between you and me, I haven't  
15 seen any of them for a year.

16 MR. JONES: There were 14 altogether. In other words,  
17 they have always been done by a bill from you and then the check  
18 came. And I noticed all of them were endorsed.

19 MR. BROMLEY: Uh-huh.

20 MR. JONES: Why don't I send them to -- to my friend  
21 at the hotel?

22 MR. BROMLEY: Yes, but do you think it is wise to get  
23 them in on this?

24 MR. JONES: Well, they don't know.

25 MR. BROMLEY: I was surprised when I got the phone call

because I think as few people should know about it as possible.

MR. JONES: You know I stayed there that night.

MR. BROMLEY: Yes. But she didn't say anything out of place. She didn't indicate that they knew more than a simple message that you left for me. But you got a pencil and paper?

MR. JONES: Yes. Just a second. O.K.

MR. BROMLEY: Send them to Suite 501, 1000 16th Street N.W., in Washington. That is my office with the coal people.

MR. JONES: O.K.

MR. BROMLEY: I will get that and also I will have to check them with him. I haven't gotten any word from them, but I am sure I am going to have trouble with the '63. If I do, I am going to have to get in touch with somebody.

MR. JONES: Well, — I think that — Yes, because that was all supposed to be —

MR. BROMLEY: It wasn't supposed to be handled the way it was at all, so there is no problem about that.

MR. JONES: What's that?

MR. BROMLEY: I said you know —

MR. JONES: Yes.

MR. BROMLEY: — how it was supposed to have been handled, because — Look, as I told you earlier, I haven't actually been before the Grand Jury and I am wondering what I am going to say, if I am called.



1 MR. JONES: That is right.

2 MR. BROMLEY: I am getting right disturbed about it,  
3 because I haven't talked with --

4 MR. JONES: Mm-hm.

5 MR. BROMLEY: -- our friend, and I just don't know how  
6 you know how this whole thing is going to be handled and it's  
7 really got me over a barrel.

8 MR. JONES: Well --

9 MR. BROMLEY: Plus the fact that I have to get my  
10 returns in less than a month, because last year, as I told you,  
11 I didn't get mine in until December 1st and they really haven't  
12 had time to check me out on it. And I normally run into trouble  
13 and I want to know how to handle this one.

14 MR. JONES: I'll tell you what I had better do. Since  
15 your record is not completed, you don't remember, I had better  
16 get you some copies back there.

17 MR. BROMLEY: Yes, send me some copies, because I  
18 have never had any of them.

19 MR. JONES: You mean that those endorsements aren't  
20 yours?

21 MR. BROMLEY: The last half of them are not.

22 MR. JONES: Mm-hm.

23 MR. BROMLEY: I'll tell you the truth, I thought  
24 everything had been finished.

25 MR. JONES: Then somebody's intercepting your mail, the

1 MR. BROMLEY: Mm-hm.

2 MR. JONES: Because I don't know what to say about  
3 that. Because all of them, you know — a bill was sent in by  
4 you and then the checks were issued to you and endorsed by you.

MR. BROMLEY: Mm-hm.

6 MR. JONES: 1099 was sent to you for both years.

7 MR. BROMLEY: Mm-hm.

8 MR. JONES: So let me see what I can get on it.

9 MR. BROMLEY: Yes.

10 MR. JONES: Because you know I want to help all I  
11 can. I don't want to get involved myself.

12 MR. BROMLEY: Yes.

13 MR. JONES: Because you know what you just told me  
14 is all strange to me. I don't know.

15 MR. BROMLEY: You see that is what kind of bothered  
16 me when I talked to you earlier. I wasn't aware that this had  
17 gone on that long. They have sent all those things to you and  
18 I didn't know about it.

19 MR. JONES: I didn't know. Once I made the arrange-  
20 ments with you, I didn't know what was going on.

21 MR. BROMLEY: Mm-hm.

22 MR. JONES: They finally inquired of me, and, well,  
23 we aren't getting anything out of it anymore and just stopped  
24 it.

25 MR. BROMLEY: Mm-hm.

1 MR. JONES: Because this is all strange to me.

2 MR. BROMLEY: As you recall, I had a friend with me  
3 out in Vegas and she sort of went before the Grand Jury and she  
4 told them that I came up and took care of the business there  
5 with you in the office. Remember that Sunday morning you  
6 called me out?

7 MR. JONES: Yes.

8 MR. BROMLEY: And she's already told them all that.

9 MR. JONES: You said that you and I met out here?

10 MR. BROMLEY: Yes.

11 MR. JONES: So she knows that you and I -- You know,  
12 I didn't mention the meeting out here.

13 MR. BROMLEY: Mm-hm.

14 MR. JONES: You know, because, you know, I knew that  
15 was a delicate situation with you.

16 MR. BROMLEY: Yes, that was --

17 MR. JONES: So I just said we met in Washington, D.C.  
18 They didn't ask me if we ever met out here.

19 MR. BROMLEY: Yes.

20 MR. JONES: That party doesn't know anything that we  
21 talked about though.

22 MR. BROMLEY: No, no. I didn't go into that.

23 MR. JONES: All she said was we met out here.

24 MR. BROMLEY: She said you called me that Sunday and  
25 we had a meeting upstairs.

1 MR. JONES: You mean in my office?

2 MR. BROWLEY: Oh, yes.

3 MR. JONES: Where was she?

4 MR. BROWLEY: She was still asleep.

5 MR. JONES: So that they know that we had a business  
6 meeting?

7 MR. BROWLEY: Yes.

8 MR. JONES: So that they know you were my attorney?

9 MR. BROWLEY: Yes. But I'll tell you I am just  
10 naturally getting concerned, because I don't want to be left  
11 holding the bag here.

12 MR. JONES: Yes.

13 MR. BROWLEY: As you know, I am still the hind tit  
14 here and I don't want to stay here.

✓ 15 MR. JONES: I will get this thing to you and on. You  
16 don't know when you might be asked to come down there?

17 MR. BROWLEY: No, I won't be coming out there until —  
18 I just have no idea.

19 MR. JONES: I don't mean out here. I mean when you  
20 might be asked to come down there.

21 MR. BROWLEY: No, I don't know. I have been under  
22 subpoena six weeks or more and I don't know why I haven't been  
23 called. So has Ernie Tucker. He has been subpoenaed, too.  
24 There is a bunch that haven't been called yet. I guess they  
25 are taking their time getting around to us.

1 MR. JONES: I will get this thing to you right away,  
2 so you will know what you were paid for and when.

3 MR. BROMLEY: Yes. I will tell you, he has been so  
4 busy this last year or so that I just haven't had a chance to  
5 find out what in the hell has been going on and I can't pin him  
6 down a bit.

7 MR. JONES: I will -- You aren't likely to be out on  
8 the West Coast any place?

9 MR. BROMLEY: No. The only place I know I am going  
10 to be is in Chicago in June, June 12.. But to you out there,  
11 that is far east?

12 MR. JONES: What's that? Yes. Uh-huh. O.K. You  
13 are not home now?

14 MR. BROMLEY: Oh, yes, I am.

15 MR. JONES: You are home?

16 MR. BROMLEY: Yes.

17 MR. JONES: Well, O.K. Well, I will get this stuff  
18 out to you. But it went from May of 1963. It was, I think,  
19 either 13 or 14 up and the last one was July '64.

20 MR. BROMLEY: Uh-huh.

21 MR. JONES: There were either 13 or 14.

22 MR. BROMLEY: Uh-huh.

23 MR. JONES: And all the checks were endorsed -- All  
24 the checks -- There was a bill came from you, from your office,  
25 signed by you, and or signed, you know.

1 MR. BROMLEY: Yes.

2 MR. JONES: There was one it was on somebody else's  
3 stationery.

4 MR. BROMLEY: Uh-huh.

5 MR. JONES: And that was for March of '64. But there  
6 was also another bill in there for March and April '64, two,  
7 and there was a check for \$3,000.

8 MR. BROMLEY: Yes. O.K.

9 MR. JONES: So you will know about what it was. I will  
10 get it up to you.

11 MR. BROMLEY: Are you planning to be East anytime  
12 soon?

13 MR. JONES: Well, I think I probably should.

14 MR. BROMLEY: I think you should, too. I certainly  
15 would like to --

16 MR. JONES: Of course. -- We will see. Do you ever  
17 get up to New York?

18 MR. BROMLEY: Yes, I occasionally get up to New York.

19 MR. JONES: Uh-huh. Maybe -- I think it would be  
20 probably better.

21 MR. BROMLEY: Yes, or either here. It don't make  
22 any difference.

23 MR. JONES: What's that?

24 MR. BROMLEY: I said I would like to bring Bobby with  
25 me so we could go over this thing.

1 MR. JONES: Do you think that is wise? They are going  
2 to ask you what you did do --

3 MR. BROMLEY: I see him all the time anyway, so it  
4 doesn't make any difference whether they ask me. Are they going  
5 to call you back again, or do you know?

6 MR. JONES: No, I don't think so.

7 MR. BROMLEY: Yes. Well, I saw Bobby Sunday before  
8 last and I see him periodically.

9 MR. JONES: Yes.

10 MR. BROMLEY: So you know it doesn't make any differen  
11 when they ask me how long it has been since I saw him.

12 MR. JONES: You see him all the time. I haven't seen  
13 him for months.

14 MR. BROMLEY: Yes.

15 MR. JONES: You better say, ask me no -- and say --  
16 Well, I will get this stuff off to you and when you get it,  
17 maybe you will give me a call.

18 MR. BROMLEY: O.K., I will give you a buzz after I  
19 get it.

20 MR. JONES: What I will do, I will send you copies  
21 of everything.

22 MR. BROMLEY: I would appreciate it if you would and  
23 if you could Thermofax my invoices to you, because at least I  
24 would like to see them.

25 MR. JONES: They will only be photostatic copies.



1 MR. BROMLEY: That will be fine.

2 MR. JONES: -- maybe we can get together on this.

3 MR. BROMLEY: Uh-huh. O.K., well, fine. Then I  
4 will be expecting the stuff in the mail.

5 MR. JONES: Because, you know, they are not after you  
6 and all, they are after the other fellow.

7 MR. BROMLEY: Yes. Uh-huh.

8 MR. JONES: I don't know -- But they didn't ask any-  
9 thing about our making our arrangements out here, you know.

10 MR. BROMLEY: Uh-huh.

11 MR. JONES: And I told him we first talked it over  
12 on the Hill. Well, we did, didn't we? And for several months  
13 we never got it worked out and you came out here and we made a  
14 deal.

15 MR. BROMLEY: Honestly, just to refresh my memory, the  
16 first thing I ever heard about it was that morning in Las Vegas.  
17 I don't remember discussing anything here.

18 MR. JONES: You and I did discuss it one day, the  
19 first discussion we had about it was there in his office and  
20 just you and I were there and we were waiting for him. At  
21 least that is my recollection.

22 MR. BROMLEY: Uh-huh.

23 MR. JONES: Then later I told him that I was going  
24 to do something with you.

25 MR. BROMLEY: Uh-huh.



1 MR. JONES: And then later on we made the deal out  
2 here. When was it you were out here?

3 MR. BROMLEY: I was out there for the Cannon Testi-  
4 monial Dinner.

5 MR. JONES: Yes.

6 MR. BROMLEY: Remember, I was on that famous Riddle  
7 Airlines flight.

8 MR. JONES: That is right. That was in the 'fall.'

9 MR. BROMLEY: That was in April of '63.

10 MR. JONES: April of '63?

11 MR. BROMLEY: Yes.

12 MR. JONES: Well, that is when we made the final  
13 arrangements.

14 MR. BROMLEY: Yes, that is when everything was done.  
15 But anyway I don't remember the other conversation, but I can't  
16 say that it never took place.

17 MR. JONES: So, from the other person's testimony,  
18 they knew that we had a deal.

19 MR. BROMLEY: That is right, and that it was culmi-  
20 nated, or that it took place there.

21 MR. JONES: And they asked where we first discussed  
22 it and it was up on the Hill. I started to discuss it with you  
23 one day, but it actually was completed out here. That is right.

24 MR. BROMLEY: I don't remember the conversation on  
25 the Hill. But that is your recollection. But I don't remember

1 it anyway. That is beside the point. It doesn't make any  
2 difference.

3 MR. JONES: We made the final arrangements out here.  
4 Didn't you even come down to here?

5 MR. BROMLEY: Come where?

6 MR. JONES: You came to my office.

7 MR. BROMLEY: Yes. Remember, you called me.

8 MR. JONES: Yes, I know you came to my office.

9 MR. BROMLEY: In fact, I think we came down and then  
10 we had to go up a floor, walk up.

11 MR. JONES: That is right. That is even better, don't  
12 you think?

13 MR. BROMLEY: Yes. I think it would be better.

14 MR. JONES: Yes, that is even better. In other words,  
15 the first conversation was held there and you came out here  
16 and we rode around and went to my office and made the deal.

17 MR. BROMLEY: Uh-huh.

18 MR. JONES: There was nobody else present, but the  
19 two of us, was there, just the two of us?

20 MR. BROMLEY: Cliff, are you asking me, or are you  
21 telling me?

22 MR. JONES: I am telling you.

23 MR. BROMLEY: O.K. All right.

24 MR. JONES: That part of it --

25 MR. BROMLEY: Yes. O.K.,

1 MR. JONES: All right. Fine. All right, Wayne.

2 MR. BROMLEY: Send me that stuff and let me see you  
3 when you get East.

4 MR. JONES: All right. Fine.

5 MR. BROMLEY: O.K.

6 (The conversation was terminated at 12:35 A.M. EST.)  
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Sent March 24, 1965

ELH:ASM:gap

T-2/24/65

51-16-706

Director  
Federal Bureau of Investigation

Herbert J. Miller, Jr.  
Assistant Attorney General  
Criminal Division

Robert C. Baker

cc: Records  
Chrono  
Mr. Mittler  
Mr. Miller  
Office Files  
Office Chrono

Attorney William C. Bittman received a telephone call from Mark Samygroand, Wayne Bromley's attorney, at about 12:00 midnight March 23, 1965. Mr. Samygroand related to Mr. Bittman that his client, Wayne L. Bromley, had received a telephone call from Clifford Jones from Las Vegas, Nevada. Bromley received this telephone call from Jones at approximately 11:30 P.M.

The substance of that call, as related to Mr. Bittman by Samygroand last night and again this morning, March 24, 1965, was as follows: Jones urged Bromley to meet with him and Baker in Las Vegas this Thursday, Friday or Saturday to discuss "the situation." Jones told Bromley that he would pay his fare to Las Vegas, and further suggested that Bromley call Baker to make the necessary arrangements. Jones also requested that Bromley call him back today concerning these arrangements.

By way of background, Jones had telephoned Bromley at Bromley's home on Monday evening, March 22, 1965. In this conversation Jones informed Bromley that Jones had testified before the grand jury that he had arranged for Bromley to be retained by a Jones corporation in exchange for services to be rendered by Bromley, and not by any other person, "and don't you forget it. That's the way it's going to be."

Bromley has already testified before the grand jury regarding this matter. In summary, Bromley's testimony was that, pursuant to a meeting with Baker and Jones in Las Vegas in 1963, Bromley agreed to accept a \$1,000 check each month for a period of several months, payable to him, which he would cash and turn the proceeds over to Baker. Bromley's

grand jury subpoena was continued generally to the conclusion of his initial appearance before the grand jury in February 1965. Jones' testimony before the grand jury, as related above, and the transaction entered into among Jones, Baker and Bromley for the payment of money to Baker through Bromley constitute "the situation," as set forth above.

In response to Jones' request last night, Bromley will call Baker to discuss the matter. Bromley, as Jones requested, will call Jones in Las Vegas today. Bromley, upon the advice of counsel, has this day executed a written, signed consent to have the telephone conversations between himself and Baker and between himself and Jones witnessed, monitored, and mechanically or electronically recorded by agents of the Federal Bureau of Investigation.

The Criminal Division desires the following investigative action to determine if Jones and perhaps Baker are endeavoring to obstruct the due administration of justice (18 USC 1503) or are in violation of other Federal criminal statutes.

I request that the FBI take the necessary steps, in cooperation with Bromley, to witness, monitor, and mechanically or electronically record the telephone conversations that are referred to above. Bromley will place both telephone calls today. By reason of the urgency of this matter and the obvious shortage of time involved, I request that action be taken at the earliest possible time today.

In view of the facts as set forth above, it is the judgment of the Criminal Division that the investigative action that is being requested herein would be violative of no Federal criminal statute, would not constitute an entrapment, and would not violate any of the constitutional rights of the parties involved.

The original and copies of Bromley's consent are being retained by the Criminal Division and will be made available to you upon request.

CONVERSATION OVERHEARD BY B. FRANKLIN TAYLOR, JR.,  
ON NER RECEIVER IN ROOM 422, BEVERLY WILSHIRE HOTEL,  
LOS ANGELES, ON MARCH 26, 1965, BETWEEN THE HOURS OF  
9:15 P.M., AND 11:02 P.M., P.S.T.

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Wherever possible I have attempted to identify the source of each statement. These identifications represent my opinion based upon such factors as advance information as to whom the participants were expected to be, my familiarity with Bromley's voice, the distinct difference in accents of the other two participants, the occasional references of the speakers to each other by name, and the conversational context.

At 9:15 P.M. Wayne Bromley's voice was heard and the following occurred:

Bromley - "Meet you in the bar in fifteen or twenty minutes."

Unidentified male voice - "All right."

Bromley - "That's all for now fella."

After a brief pause, Bromley said, "I don't guess you're interested in my getting dressed. I'm going to turn it off for fifteen minutes and listen to the radio."

At this point reception ceased.

At 9:50 P.M. Bromley's voice was heard again as follows:

Bromley - "I'm going downstairs now. He has talked to Cliff. Sanford Mark is at Room 349 at the Beverly Hilton."

At 9:54 P.M. various male and female voices and laughter were heard. An unidentified male voice was heard to say, "I played eighteen holes of golf. I had a 105 but I knocked hell out of the ball." Bromley's voice was heard saying, "Beverly Wilshire - I've heard about this place."

At 10:02 P.M. male voices were again heard. The following conversation was heard by me:

Unidentified male voice - "There was one invoice but it was in your name . . ."

Unidentified male voice - "Don't want to put words in your mouth. . . ."

Unidentified male voice - "I told them the straight truth. . . ."

Unidentified male voice - "They'd like to find one of you in conflict."

Bromley - I don't know a damn thing about anything which doesn't pertain . . ."



Clifford Jones - "I told them I'd talked to

Bobby and hired you. They didn't ask about Vegas. I didn't say anything about Vegas. Natural . . . should go to Vegas . . ."

Bromley - "I was foggy that morning . . ."

Robert Baker - "You and Wayne and I and Neumeyer were there."

Jones stated that he "mentioned Bobby's office" and that Bromley was "retained on a trial basis to watch things." Jones said, "Remember there was a savings and loan thing which was hot at the time." Jones stated that he said that he was "in touch with you in Washington" and that he "discussed hiring you with Bobby when he came back to the office . . ." Jones said, "Neumeyer's presence would add to the thing but why involve him . . ."

Baker - "You've got to reconstruct exactly what was asked and what you said."



Jones stated that he said "the conversation" dealing with the hiring of Bromley took place "in Bobby's office and Bobby wasn't present." Jones said: "I didn't tell them but the story would be that it didn't start for several months . . . You were in Vegas . . . It didn't start until May of '63 . . . We made the arrangements before you came out there. You received ten payments. I got a call - I thought from you. Then I sent four \$1,000 checks. No, it was a check for \$3,000 and one for \$1,000. My understanding was that it never was supposed to go to Bobby. You could mention the Vegas meeting if you wanted to . . . If necessary, it is perfectly all right to say Bobby and Neumeyer were there."

Bromley - "you know damn good and well that money wasn't mine . . ."

Jones - "It wasn't for Bobby. It was supposed to go for politics back there."

Bromley - "Tonight is the first time I ever knew what the money was going for . . ."

Jones stated that "they" asked him whether the money was paid as a "conduit to Baker" and that he said it was not. Jones said, "They never asked me whether it was for political contributions." Jones also said, "I never knew what happened. . . It was a legal fee to you . . . Then you can say you gave it to Bobby because he needed it . . ."

Bromley - "I can and will say conduit for period . . . got it and then . . ."

Jones - "Then I'd be in the soup. You can say you were a conduit but you can't say I knew anything about it."

Bromley - "If I try and justify my taxes . . ."

Unidentified male voice - "What is your lawyer's position? Does he want you to say conduit?"

Bromley - "Conduit on all money I've received."

Jones - "You can say I didn't know about it.

Otherwise will hang one of us or both of us . . . To protect me, Wayne, all you have to say is I didn't know

anything about it. Tell them you and Bobby had deal on all the time. Say Cliff Jones knew nothing about it. Cliff Jones was paying me. If they want an explanation of the Tucker thing, that is up to you because I didn't know about it . . ."

Baker - "Everyone of you guys is afraid to talk to me and you get in trouble . . . Bob Thompson's in trouble . . . You for perjury . . . Me for illegal campaign contributions . . ."

Jones - "The story is simple as this deal for an attorney fee . . ."

Baker - "His lawyer was an assistant to the fellow in charge of the grand jury."

Jones - "He doesn't know whether I knew conduit because I said I was hiring you as a lawyer . . ."

Baker - "I'm as serious as I can be that you ought to be together as much as you can . . ."

Jones - "Wayne and I ought to tell the same story . . ."

Baker - "You have got to sit down and put down how you testified and give it to Bromley because he has to testify in the next couple of weeks . . . He can say I don't recall who was in the Vegas meeting -- whether Baker was there . . ." Baker said that "they'll wish they never heard of me" and that he would "fight like a god-damned tiger." Laughter was heard, then Baker was heard to say, "I'm not going to testify . . . Do like Murchison says. Say yes, no, I don't remember." More laughter occurred. Baker was heard to say, "This will be the most sensational trial in 100 years . . . I'll never take the stand. I don't have to get on the fuckin' thing . . ."

Jones - "How can a man get a copy of his own testimony."

Bromley - "I don't know. I testified in September but it was brief - only to identify a check . . ."

Jones - "I didn't remember the Vegas meeting at all. I didn't tell them Neumeyer was there because I didn't remember the Vegas meeting. You can tell them about the Vegas meeting but use your own memory. Just let me know what you say . . . I told them absolutely no conduit to Baker . . . I thought campaign contribution. . . Main thing you have to be solid on is that I didn't know anything about arrangements between you and Bobby . . ."

Bromley said that he didn't know what the money was for and he thought that it might concern the "Southwestern charter matter."

Jones - "Bobby did nothing on the Southwestern matter . . ."

Bromley - "I want to protect as many people as I can . . . Not one penny hit my bank account." 57/

Jones - "I never knew that."

Bromley - "Every voucher came out of Bobby's  
office . . ."

Bromley - "You have a young lady for me."

Baker - "I gave you a number - that pro . . .  
See you later."

Bromley - "320 dollars and some cents."

Jones - "Here is something just between you and I."

Bromley - "Sorry the whole thing happened. Things  
have changed in Washington, Cliff.  
Bobby's successor in the Senate doesn't  
even use his limousine."

Jones - "Bet he doesn't do the job Bobby did  
either . . ."

Bromley - "The thing that bugs me is that I never  
got a penny. . ."

Jones - "Well - you paid Bobby. The only thing  
needed to protect me is to say I didn't  
know. And I didn't know it . . . I  
don't want you to think I lied to the  
grand jury . . ."

Bromley - "I've yet to make a penny out of these deals. If I did I might feel different . . ."

Jones - "As far as Cliff Jones is concerned, he knew nothing. You made a deal with me. Remember the first meeting. Mention the second meeting if you want to. The checks stopped. You told me you hadn't been paid and then you were paid . . ."

Background noise, voices and music were heard.

Bromley was heard to say, "If . . . call Mr. Yark at the Beverly Hilton, tell him . . . dinner."

At 11:02 reception ceased.

II



The following are notes relating to a conversation between Wayne L. Dronley, Robert C. Baker and Clifford Jones, which conversation occurred at the Beverly Wilshire Hotel, Los Angeles, California, on March 26, 1965:

At 9:50 P.M., a human voice was heard to say "Yeh." At 9:55 P.M., three male voices were overheard in an audible discussion and such conversation was overheard for a continuous period to 11:05 P.M. During the above conversation a female voice was occasionally heard.

At 9:55 P.M., a male voice stated, "I just kicked the hell out of it - I had 105 - doing good."

A female voice was heard to respond, "I'll be back in a few minutes." Then a Southern male voice was heard to say "Beverly Wilshire - haven't heard it."

A male voice then said, "You are from Norway - why do you talk so much." At that time a female voice replied, "I do not talk so much." The female voice was also overheard to say, "From Washington - so damn long."

A male voice was then heard to say, "Good - bought you - big out here."

A male voice was then heard to say, "Try to call both on telephone - not much - going to send money - got a date, 'Cliff' - Marge and Jack called - said be there any time - still be there when I call."

A male voice said, "Conflict of testimony otherwise go ask you." Southern voice said, "There is a burden of proof on you - think if you limit story to."

"Having hard time making money."

"Get those pictures."



"Look like we're in pretty good shape - one invoice is in your name - my signature and yours - not want to put words in mouth."

"Carol."

"Each one was - I told him straight truth."

"I know sometimes what he says and what I say is a complete contradiction - not that I am trying to be accceptive - they want to find us in conflict no reason."

"I did not discuss myself - I discuss only matters not pe- lining to money. I know only things not."

"What I testify absolutely."

"They ask me if I hired - I said no - I had no opportunity."

"Also told."

"This is true."

"I remember I first talked about four or fives months in the Capitol Building in Bobby's office - I forgot all about it natural met in Las Vegas - submit a bill."

"Cliff."

"In Vegas I not remember because I there - say to best of knowledge I not know."

"Not ask me if there."

"Are you asking me or telling me - way I remember."

"Fellow who died."

"Little to tell."

"Not remember other conversation."

"First recollection what in hell was it - foggy from night before."

"In Bobby's office - Bobby not there - Tyler."

"Remember savings and loan stuff was hot at that time - not remember if \$500 or \$1,000 a month."

"You were to just watch things - not reply to questions said not remember correspondence - said I was in touch with him in Washington - they asked at great length if discussed with Baker - said yes but I - what gone."

"What Baker say - say very good boy."

"No discussion concerning the subsequent matters - not remember if there."

"Think Neumeyer's presence was additional."

"Not want to bring in Neumeyer - want to refresh recollection."

"Remember to best of recollection - memorize what did."

"Not Bromley field - knew they were going to come to you - think ahead - told frankly why here because knew you and only the attorney knew - knew you years ago - conversation Baker's office waiting for Baker to come back - have on a trial basis to watch savings and loan legislation - not tell them that story be not start after that - when in Las Vegas - in 1961 - no it happened in 1963 - winter '63 - January 1963 - start in May."

"All this money was paid after Baker was in trouble."

"Tell me if you discussed earlier - definitely - he was planning - remember Las Vegas thing."

"Made arrangements before came out."

"When I found out you did not get it - stopped - later terminating arrangement - thought it was from you and stopped working four months before pay."

"Sent four more checks - one for \$3,000 and one for \$1,000 to make up the four months - not intended as a conduit to Baker - not my understanding."

"You are at liberty to mention Las Vegas meeting if you want to."

"The girl mentioned Las Vegas meeting - mention and the girl understood I represented 'Thunderbird'."

B said, "Check you and I had meeting."

A said, "It is perfectly all right to say Bobby you and Neumeyer there - Neumeyer knows this."

C stated, "Recollection." Said, "Conduit from you - I was there."

C said, "Remember seeing you - my memory Goddamn good about Las Vegas." C also said, "I was in 30% bracket - you take other taxes - \$3,000 to take care of payment."

"This money spent for Baker - this story."

A said, "Supposed to go for politics."

A said, "This thing get you in most trouble."

B said, "Everybody is in trouble."

C said, "Biggest problem - you and Lobby got in  
perjury trap."

C said, "I don't first time know where the money  
was going - first time I ever enjoyed."

C said, "Know about 95% of the people in this."

A said, "Conduit between you and Bobby and Tucker."

A said, "I said no."

I said, "Most serious thing - Republicans and  
Democrats - you got to say."

I said, "I didn't know - only thing say - not know  
what happened - as far as I'm concerned it was yours -  
on receiver - what did with it own business - up to you  
and Bobby what do with it."

C said, "Cliff - I'm going to be consistent - do  
it for a period - I got it and part of it to Bobby."

A said, "May say conduit for Bobby."

C said, "Because of taxes."

C said, "I can't in the world say that."

C said, "If I were to sit down and try to justify  
my taxes - and, point I am making is to be consistent -  
I do as first do it all the way through."

C said, "Cannot do at one point and not."

A said, "He could pay money - show \$6,000 to '64 -  
could pay office instead of gift taxes."

I said, "Here is a 1000 - \$6,000 and come in and  
pay it - oh, that gave . . ."

A said, "What is your lawyer's position - say you a conduit?"

C said, "Yes - for any money I received."

A said, "Only thing do say not know about it - can say I never knew about it - otherwise hang one or both of us - hang me or both of us - you are in a position to go - I had no giving."

A said, "To protect me, Wayne, all have to say is I know nothing about it."

A said, "Say had deal all the time."

C said, "I can't protect you."

"I did not say."

C said, "Hell of a decision to make."

A said, "Say Cliff Jones not know nothing about - a deal was made - made as an attorney."

A said, "Want explanation of Tucker thing - up to you to say - was not there."

"Wait until I am ready."

A said, "I not think of this."

C said, "Tucked up as good as can."

"Asked how long talked to Baker - said many months - year - reason why."

"All you guys are afraid to talk to me."

"Bobby Thompson is in trouble."

"Every son-of-a-bitch is afraid to talk."

"He is under jeopardy for perjury."

"I am in serious trouble for taking campaign contributions."

I said, "I'll be in trouble for giving - not ask me about that."

I said, "He is indicted on conspiracy and perjury if there is no for your ass."

I said, "I am going to testify."

I said, "Open door because every did talk."

I said, "Every sample if you deal for his attorney - this should be said."

I said, "Working door - lawyer assistant to fellow handling grand jury."

I said, "Have told truth - my contact and Baker got to - not advising me to talk."

I said, "Lawyer does not know - myse does know."

I said, "Not know how much know - actually going after me."

I said, "Still talk about \$6,000 - pay taxes - up to you - no story and documentation."

I said, "Try to be together as best can."

I said, "I am going down drain - behind bars."

I said, "Wayne and I protect each other by telling same story."

I said, "He said damn fine boy."

I said, "Not remember."

C said, "God knows."

B said, "Got to sit down and the best of recollection see how testify - going to be called."

A said, "What about meeting in Las Vegas - who was there."

C said, "Say I don't remember."

B said, "If asked if Baker there say I do not recall."

B said, "When I come out with stuff I got wish never heard of me - fight like a Goddamn tiger."

[Laughter]

B said, "If see me, Jones, say hell yes - he is my friend - say last week in town."

"Say saw him in Los Angeles."

A said, "If asked to talk to him on telephone say yes - in Las Vegas."

A said, "Say yes or no."

B said, "Best is to say I do not remember."

"If she smokes buy cigarettes."

C said, "Do you have any cigarettes."

[Female voice and music]

C said, "Puerto Rico, say yes - yes I was."

C said, "In Las Vegas, yes, I was."

B said, "Not get me on stand - say Wayne - say yes any did."

B said, "My own judgment is that there be no indictment out of this thing."

"Violations - no - my lawyer is involved - send up river for five years - play Goddamn cards anyway want."

"If do decide, burn all records."

"Got a couple of minutes."

A said, "Get hold of my testimony."

C said, "To my knowledge no way to get grand jury testimony - not know - I was before grand jury in September - only to identify a check - a subpoena duces tecum - have to get in touch with the fellows in Washington."

A said, "Just as I told you - any conflicts."

A said, "It asked about tru. . ."

A said, "Conflict between holding companies, stock, and mutual companies - discussed it with you in Bobby's office - watch legislation."

A said, "Not remember Vegas meeting - asked if others know - said Neumeyer."

C said, "Told about Neumeyer?"

A said, "If want to tell about meeting, use your own meeting."

C said, "Want to tell Neumeyer?"

A said, "Ask if conduit - Baker never."



A said, "Ask who conduit for Baker - take lie detector test - thought it would go to campaign funds - never a conduit for Bobby but discussed with you \$10,000 on a monthly trial basis - stopped."

[Female laughter]

A said, "When stopped - contact about money not paid - other \$4,000."

A said, "Whatever say about arrangement with Baker all right with me because Bobby going to pay taxes."

A said, "Whatever obligation was you were out."

C said, "Wondered what spent money for - not know - feel better now."

C said, "Honestly not remember other discussion - first recollection and no idea what wanted when in Las Vegas."

A said, "Funny you remember one and I another and not the other."

C said, "I'll tell you frankly, when I testify will protect as many people as can. Nothing to gain by taking people down the drain."

C said, "Not one penny hit my bank account - all came out of Bobby's office."

C said, "Look at checks - surprising it all money - am no expert."

C said, "That takes care of that."

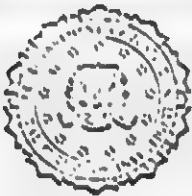
A said, "I'll drop him off - where be."

C said, "Beverly Hills 'Monsignor' Room."

A said, "Say yes - if talk to him - talk twice - tell them yes they ask Lobby there - saw Bobby - saw him several times."

A said, "Not see you until testify."

C said, "\$320 and some cents."



UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to  
File No.



WASHINGTON 25, D. C.

March 26, 1965

ROBERT G. BAKER  
CONFLICT OF INTEREST;  
FRAUD AGAINST THE GOVERNMENT

Attached is a transcript of telephone calls made by Wayne L. Bronley to Clifford Jones and Robert G. Baker as recorded by a Special Agent of the Federal Bureau of Investigation per the request of the Department of Justice.

Also enclosed are the two original rolls of magnetic recording tape, appropriately identified, containing the afore-mentioned telephone calls.

This document contains neither  
recommendations nor conclusions of  
the FBI. It is the property of  
the FBI and is loaned to your agency;  
it and its contents are not to be  
distributed outside your agency.

Received

MAR 26 1965

AAG Criminal

Attachments

SUBJECT:

# 73  
CLIFF JONES

The following is a transcript of phone calls and attempted phone calls to ROBERT G. BAKER and CLIFFORD JONES from WAYNE L. BROWLEY on March 24 and 25, 1965:

FIRST CALL:

Operator: saying "operator". BROWLEY: Operator, I want to make a long-distance call to Beverley Hills, California. My name is WAYNE BROWLEY. My number is EM 5-3516.  
OPERATOR: That is the number you're calling in Beverley Hills?  
BROWLEY: No, this is my number...uh...I want it charged to my home phone number.

OPERATOR: What was your home phone number again?  
BROWLEY: My home phone number is Empire 5-3516. I'm calling from Sterling 3-8712, but I want it called to my .... uh...rather charged to my home. I would like to speak with Mr. ROBERT BAKER at the Beverley Rodeo Hotel in Beverley Hills, California. I do not know the area code, but the phone number of the hotel is 273-0300.

OPERATOR: Where is your home phone located, sir?

BROWLEY: In Bethesda, Maryland.  
(Pause)

OPERATOR: To unidentified 2nd operator: saying..Beverley Hills, California. UNIDENTIFIED 2ND OPERATOR says "right, the number is 213 plus 7D.

OPERATOR: To BROWLEY: The area code is 213, sir.

BROWLEY: Thank you.  
(Pause while number is ringing)

UNIDENTIFIED

WOMAN: Good afternoon, Beverley Rodeo Hotel.

OPERATOR: Good afternoon, long-distance calling for Mr. ROBERT BAKER.

UNIDENTIFIED

WOMAN: Well, I'll see if he is in, but I doubt it. Just a moment; because I saw him go out a few minutes ago.  
(Pause) No Mr. BAKER is not in.

BROWLEY: To operator: Operator, ask her if she has any idea where he might be located.

UNIDENTIFIED

WOMAN: Just a minute. (pause) Hello?

OPERATOR: Yes.

UNIDENTIFIED

WOMAN: Well, I don't know where Mr. BAKER is. I saw him go out; he isn't in at the moment.

OPERATOR: To Mr. BROWLEY: Want to leave word, sir?

BROWLEY: No, that's all right operator, I have another number I'd like you to try.

END OF FIRST CALL

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SECOND CALL:

BROMLEY: Are you still there?  
OPERATOR: Yes.  
BROMLEY: Okay, let's try him in Los Angeles.  
OPERATOR: Are we calling for Mr. BAKER still?  
BROMLEY: Yes, please. The number in Los Angeles is 326-2250.  
(Pause while ringing)  
UNIDENTIFIED  
WOMAN: Good Afternoon. Beverley Rodeo Hotel.  
OPERATOR: Just a moment please.  
(Pause while ringing)  
UNIDENTIFIED  
WOMAN: Serv-U Corporation.  
OPERATOR: Long-distance calling for Mr. ROBERT BAKER?  
UNIDENTIFIED  
WOMAN: Mr. BAKER isn't in. May I take a message?  
OPERATOR: Is he expected?  
UNIDENTIFIED  
WOMAN: Uh, I expect him to call me shortly.  
OPERATOR: Just a moment. (then to Mr. BROMLEY) Hello, sir.  
BROMLEY: Uh, I'll call back a little later operator, Thank you.  
OPERATOR: (to unidentified woman) My party will call back in a few minutes. Thank you very much.

END OF SECOND CALL

THIRD CALL:

OPERATOR: Operator, may I help you?  
BROMLEY: Yes, please. I'd like to make a long-distance call, uh, I'd like to speak with Mr. CLIFF JONES, an attorney-at-law in Las Vegas, Nevada, and I do want to call his law office.  
OPERATOR: All right.  
BROMLEY: I want to have this call charged to my home number. My name is WAYNE BROMLEY. My home number is Empire 5-3516. I am calling from Sterling 3-8712.  
OPERATOR: Thank you, Mister BROMLEY.

1039

THIRD CALL (Continued):

BROWLEY: I believe that his law firm is JONES, WEINER, and JONES.  
OPERATOR: WEINER and JONES?  
BROWLEY: Jones, Weiner, and Jones, as in hot dog.  
OPERATOR: Jones, Weiner, and Jones?  
BROWLEY: Right.  
OPERATOR: Thank you. Las Vegas, Nevada - is that where it is?  
BROWLEY: Yes.  
(Pause while ringing)

UNIDENTIFIED

WOMAN: Routing.

OPERATOR: Las Vegas, Nevada, information route.

UNIDENTIFIED

WOMAN: All right. 702 plus 7D for numbers; 702 plus 001 plus for information.

OPERATOR: Right. (then to BROWLEY) The area code is 702.

BROWLEY: 702.  
OPERATOR: Good afternoon. Is this a good connection operator?

2ND OPERATOR: Yes.  
OPERATOR: All right. We would like the number of the law firm of Jones, Weiner, and Jones.

2ND OPERATOR: The number is 302-0569.  
OPERATOR: All right, thank you operator. (then to BROWLEY) Did you get that number?

BROWLEY: No, I didn't.  
OPERATOR: All right; it is 302-0569.

BROWLEY: Thank you very much.  
OPERATOR: You're welcome. (pause while ringing)

UNIDENTIFIED

WOMAN: Jones, Weiner, and Jones.

OPERATOR: Good afternoon. Mr. CLIFF JONES please, long-distance is calling. (pause)

JONES: Hello?

OPERATOR: Mr. CLIFF JONES?

JONES: Speaking.

BROWLEY: CLIFF, this is WAYNE.

JONES: Yeah Wayne.

BROWLEY: I have not been able to get in touch with BOBBY out there at all. I'm going to keep on trying him..uh.. it's my understanding from his office that he is going to be coming back to town Friday sometime.

JONES: Uh huh.

BROWLEY: But if I reach him maybe he can stay over and come back on Friday night or Saturday.

JONES: Yes, all right.

1.045

THIRD CALL (Continued):

BROMLEY: So if I were to come it would have to be Friday afternoon before I could even get there. Now, how is that with you?

JONES: That's okay.

BROMLEY: Okay.

JONES: I will be there all day Friday anyway.

BROMLEY: Oh, you will be in Los Angeles anyway on Friday?

JONES: Yes. Uh huh.

BROMLEY: Okay..uh..well.....

JONES: (interrupting)..Let's pick out a definite place for this.....

BROMLEY: (interrupting)..Well, the whole thing is that I'll have to call you back tomorrow some time to tell you whether or not he's going to still be there. Then at that time we'll have to set the time and place because I don't know a thing about Los Angeles hotels or anything.

JONES: WELL, I'll be at the Beverley Wilshire Hotel.

BROMLEY: Okay.

JONES: So if it's on Friday I will go and register at the Beverley Wilshire Hotel.

BROMLEY: All right. Good.

JONES: All right, so you got that name? I'm sure you'll reach this guy, won't you?

BROMLEY: Yeah. He is still there except I missed him both at the hotel and at the office there.

JONES: Uh huh. Where does he stay there?

BROMLEY: At the Beverley Rodeo.

JONES: Oh yeah. I know where that is. That's just up the street from where I will be.

BROMLEY: Yeah. Okay. Well, look, if I can get there we'll plan to meet six or seven o'clock or so on Friday.

JONES: All right. Fine.

BROMLEY: Good. Fine. Well, anyway, I'll be in touch with you tomorrow after I talk with him then.

JONES: All right. Fine.

BROMLEY: Okay.

END OF THIRD CALL

FOURTH CALL:

BROMLEY: Operator, I would like to make a long-distance call to Beverley Hills, California, area code 213, the number is 273-0300. I want to speak to Mr. ROBERT BAKER. I'm calling from one number and want it charged to another.



FOURTH CALL (Continued):

OPERATOR: Just a moment sir, hold on.  
BROWLEY: All right. (pause)  
OPERATOR: Now, what number do you want it charged to please?  
BROWLEY: I want it charged to my home number, which is 369-3813.  
OPERATOR: Is this a Washington area number?  
BROWLEY: Yes, it's in Bethesda, Maryland.  
OPERATOR: And your name?  
BROWLEY: And my name is WAYNE BROWLEY, and I'm calling from Sterling 3-8712.  
OPERATOR: Thank you.  
BROWLEY: All right.  
(pause while ringing)  
OPERATOR: I'm not getting an answer on that number. Is that a business establishment?  
BROWLEY: Operator, it is a hotel.  
OPERATOR: Oh. It is 273-0300?  
BROWLEY: Wait a minute. 213 is California, is it not?  
OPERATOR: Right. What place in California?  
BROWLEY: Beverly Hills. What I want - in fact you might verify this and start again. I wanted the Beverley Rodeo Hotel in Beverly Hills, California, and I want to speak to Mr. BAKER there.  
OPERATOR: That was the Beverley Rodeo?  
BROWLEY: Yes. Uh huh.  
(pause)  
UNIDENTIFIED WOMAN: Information, long-distance.  
OPERATOR: For Beverley Hills for the Beverley Rodeo Hotel.  
UNIDENTIFIED WOMAN: The number is 273-0300.  
OPERATOR: (to BROWLEY) That is the correct number; I'll try again.  
BROWLEY: Okay, thank you.  
(pause while ringing)  
UNIDENTIFIED WOMAN: Beverley Rodeo Hotel.  
OPERATOR: Mr. ROBERT BAKER, please; long-distance calling.  
UNIDENTIFIED WOMAN: Is the call paid?  
OPERATOR: Yes it is. (pause)  
UNIDENTIFIED WOMAN: There is no answer.  
BROWLEY: Operator, could they page him there in the hotel.  
OPERATOR: (to unidentified woman) Is there any way you could page him?  
UNIDENTIFIED WOMAN: I did page him.

11642



FOURTH CALL (Continued):

BROMLEY: In the hotel lounge and everything?

UNIDENTIFIED

WOMAN: No, I will ring it for you.

BROMLEY: Okay, if you would please. (pause)

UNIDENTIFIED

MAN: (unintelligible), may I help you?

OPERATOR: Yes. Would you check and see if Mr. ROBERT BAKER is there?

UNIDENTIFIED

MAN: ROBERT.....

OPERATOR: Yes, ROBERT.

UNIDENTIFIED

MAN: Nathan?

OPERATOR: BAKER. B A K E R.

UNIDENTIFIED

MAN: BAKER. Just a minute; I'll page him. (pause)

BROMLEY: Thank you operator. I'll just leave a message that I called and I'll call him back later.

OPERATOR: Sir, I can't leave that type of message. I can leave my operator's number and your telephone number to have him return your call or you call him back later.

BROMLEY: Well, operator, I'll be going around to different places now so I'll have to call back later.

OPERATOR: Okay. Thank you.

END OF FOURTH CALL

FIFTH CALL:

BROMLEY: I'd like to make a call to Mr. ROBERT BAKER in Los Angeles, California, area code 213; the number is 326-8850. My name is WAYNE BROMLEY. I'm calling from Sterling 3-3712; however, I want the call charged to my home number, which is 365-3516, which is Bethesda.

OPERATOR: Thank you sir.  
(pause while ringing)

UNIDENTIFIED

WOMAN: Serv-U Corporation.

OPERATOR: Long-distance is calling Mr. ROBERT BAKER. (pause)

UNIDENTIFIED

WOMAN: Who is calling?

OPERATOR: Mr. WAYNE BROMLEY. (pause)

UNIDENTIFIED

WOMAN: Well, operator, there isn't anyone in there now.

FIFTH CALL (Continued):

BROMLEY: Operator, ask her if there is any place where he can be reached.

OPERATOR: Can he be reached at another number?

UNIDENTIFIED WOMAN: Just a minute operator. (pause) Who is calling him operator?

OPERATOR: Mr. WHITE BROMLEY.

UNIDENTIFIED WOMAN: Is this a paid call operator?

OPERATOR: Yes it is.

UNIDENTIFIED WOMAN: Your telephone number there?

OPERATOR: 783-8712.

UNIDENTIFIED WOMAN: And what is this in regards to?

OPERATOR: Sir, would you like to speak to the operator on the line?

UNIDENTIFIED WOMAN: Operator, if you can tell me what it is in regards to, because I'm answering service and I'll get my party if I possibly can reach him.

OPERATOR: (to BROMLEY) What is this in regards to sir?

BROMLEY: Look, it's a personal matter. We're old, personal friends.

OPERATOR: (to unidentified woman) It is a personal matter operator. (pause) Hello sir?

BROMLEY: Yes operator?

OPERATOR: They don't know whether to expect him tonight or not.

BROMLEY: Well, uh, I'm not sure exactly where I'm going to be so if there's no place where I can reach him then I'll call him again in the morning.

OPERATOR: (to unidentified woman) And you don't know where we can reach him now?

UNIDENTIFIED WOMAN: Not now I don't. This is the only number that I have operator.

OPERATOR: All right, thank you.

BROMLEY: Thank you.

END OF FIFTH CALL

SIXTH CALL:

OPERATOR: Good morning, may I take your call please.

11044

SIXTH CALL (Continued):

BROMLEY: Yes. I'd like to call long-distance to Beverley Hills, California. I'd like to speak with Mr. ROBERT BAKER. That's area code 213; the number there is 273-0300. My name is WAYNE BROMLEY. I would like to have this charged to my home number, which is 365-3516, but I'm calling from Sterling 3-8712.

OPERATOR: Thank you very much Mr. BROMLEY.  
(pause while ringing)

UNIDENTIFIED

WOMAN: Good morning; the Beverley Rodeo Hotel.

OPERATOR: Good morning. Mr. ROBERT BAKER please, long-distance calling. (pause)

BAKER: Hello?

OPERATOR: Good morning; Mr. ROBERT BAKER please, long-distance calling.

BAKER: This is he.

OPERATOR: Go ahead sir.

BROMLEY: BAKER?

BAKER: Yeah.

BROMLEY: You're harder to get in touch with than the Pope is.

BAKER: I aint very God damn hard to get ahold of.

BROMLEY: Yes you are. I called you yesterday.

BAKER: You didn't leave a message.

BROMLEY: No. Well, just between you and me, I was, uh, out last night.

BAKER: Yeah.

BROMLEY: And I never knew exactly where I was going to be.

BAKER: Yeah.

BROMLEY: I got a call last week from D. KAUFFMAN (phonetic) and, uh, CLIFF JONES was here last week and he went down to see those fellows last Wednesday.

BAKER: Right.

BROMLEY: So he left a message with her. She finally got in touch with me last Friday and, uh, gave me the message and so on. So then he called me Monday evening and, uh, then he called me Tuesday evening again.

BAKER: Yeah.

BROMLEY: And Tuesday he wanted the three of us to get together.

BAKER: Yeah.

BROMLEY: And he wants me to fly out to California and he is going to be there tomorrow anyway.

BAKER: Right.

BROMLEY: And he wanted us to get together.

BAKER: Well...

BROMLEY: What's your schedule. When're you coming back?

SIXTH CALL (Continued):

BAKER: I was going to try to get back there, oh, sometime between Saturday and Monday. I just don't know.

BROCKLEY: Well then, what's your schedule for tomorrow night?

BAKER: (unintelligible). I'll be waiting on you.

BROCKLEY: Okay.

BAKER: Did they, uh, go into depth about anything?

BROCKLEY: Yeah, they did.

BAKER: About any other people?

BROCKLEY: No. Apparently some of the things they asked...you know, they went into that meeting we had out there...

BAKER: Did they give him a pretty rough time?

BROCKLEY: He didn't seem to think so. He felt roughly good about it.

BAKER: He did?

BROCKLEY: But, uh, what he was doing with me was just - you know - checking so we would have the same story. ~~for~~

BAKER: Oh, I think that's very important.

BROCKLEY: But, uh, he did think it important enough that he wants me to fly out there tomorrow.

BAKER: Oh, God damn, that's too much. Come on here. Just let me know when you're going to be here and I'll pick you up.

BROCKLEY: Okay, I'll tell you what I'll do; I'll send you a telegram. I'll probably fly out, uh .....

BAKER: I'll tell you what; uh, we call in every day to our office, so if you will let ERNIE (phonetic) know he can let me know.

BROCKLEY: Yeah, well I talked with ERNIE yesterday. In fact I called him yesterday afternoon around four o'clock or so and found out exactly where you were. Then he gave me your number both there and at the office.

BAKER: Yeah, right.

BROCKLEY: And then I tried to reach you last night...

BAKER: Yeah. I was a little bit hard to find last night.

BROCKLEY: (laughing) I know you were. But I called you - I guess it was seven o'clock your time.

BAKER: You what?

BROCKLEY: I said I called you last night about ten o'clock, but they didn't know where you were; in fact here this afternoon they said I just missed you. I'm probably getting pretty well known to all in the hotel.

BAKER: (unintelligible)

BROCKLEY: She said she just seen you go out.

BAKER: Huh?

BROCKLEY: I said, uh, she said that you just left there yesterday afternoon when I called.

11046

SIXTH CALL (Continued):

BAKER: Yeah.  
BROMLEY: Well, look then, I told CLIFF that after I talk to you I'd give you, or rather I'd give him a buzz.  
BAKER: Fine.  
BROMLEY: And, uh, I think there is a plane that leaves here early tomorrow afternoon that gets me in there around fiveish or so. So maybe we can plan to meet him around seven and (unintelligible) tomorrow evening.  
BAKER: All right. I'll see you tomorrow.  
BROMLEY: Mmh?  
BAKER: I'll see you then tomorrow, right?  
BROMLEY: Yeah. Okay, fine. If I don't send you a telegram then I'll call ERNIE today and tell him what time...  
BAKER: Yeah, and I'll meet you.  
BROMLEY: Okay, old buddy. Bye Bye.  
BAKER: Bye.

END OF SIXTH CALL

SEVENTH CALL:

OPERATOR: Good morning, may I help you?  
BROMLEY: Yes, please. I'd like to make a call to Las Vegas, Nevada. I'd like to speak with Mr. CLIFFORD JONES. His number there is 878-9633. My name is WAYNE BROMLEY. I would like this call charged to my home, which is 365-3516, in Bethesda, and I'm calling from Sterling 3-8712.  
OPERATOR: Thank you Mr. BROMLEY.  
(pause while ringing)  
UNIDENTIFIED  
MAN: Hello?  
OPERATOR: Mr. CLIFFORD JONES please, long-distance calling.  
UNIDENTIFIED  
MAN: Just a moment operator. (pause) Who is calling please.  
OPERATOR: Mr. WAYNE BROMLEY.  
JONES: CLIFFORD JONES here.  
OPERATOR: Mr. CLIFFORD JONES?  
JONES: Speaking.  
BROMLEY: CLIFF?  
JONES: Yes.  
BROMLEY: WAYNE. I am sorry for calling you so early.  
JONES: That's okay.

11,047

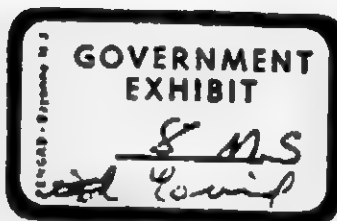
SEVENTH CALL (Continued):

BROWLEY: But I've got a real busy day and this is the only chance I...  
JONES: Yeah. Well, I've been up for a long time.  
BROWLEY: Okay, well I was talking with BOB and he is going to meet me at the airport tomorrow afternoon. There is a flight that leaves here around threeish. I should be there around five. Where shall we meet tomorrow?  
JONES: Well, I'll tell you what; I'll get a, uh, when I get in I'll get a room at the International Hotel. It is a big hotel there by the airport.  
BROWLEY: Yeah.  
JONES: But he's going to meet you there?  
BROWLEY: He is to meet me at the airport and, uh....  
JONES: Well, what were you going to do from there, go on into town?  
BROWLEY: Yeah. He is staying at the Beverley Rodeo....  
JONES: Okay. Well, I'll be at the Beverley Wilshire.  
BROWLEY: Okay. Well look then, after we get at his hotel we'll give you a buzz, then...  
JONES: Okay. Fine.  
BROWLEY: But, uh, then you can come over and after we can come over your place.  
JONES: Yeah, we'll make arrangements then.  
BROWLEY: Yes.  
JONES: All right. Fine.  
BROWLEY: Okay. I told him about everything and he was rather concerned, uh, he thought it was a good idea for us to all get together on this.  
JONES: Yeah. Okay.  
BROWLEY: But, uh, hey - I hate to even mention this, but you are going to take care of my expenses, aren't you?  
JONES: Yeah. I told you I'd pay your way.  
BROWLEY: Yeah. Okay, old buddy.  
JONES: All right.  
BROWLEY: All right, I'll see you tomorrow night.

END OF SEVENTH CALL

16048





LM:ASH:gap  
51-14734-25, 1965

Director  
Federal Bureau of Investigation

Herbert J. Miller, Jr.  
Assistant Attorney General  
Criminal Division

Robert J. Baker

cc: Records  
Chrono  
Mr. Mittler  
Mr. Miller  
Office Files (5)  
Office Chrono

Reference is made to my memorandum to you of yesterday, March 24, 1965. The telephone call from Bronley to Baker and the telephone call from Bronley to Jones were placed and received by the Bureau. The results of these telephone calls were furnished to Departmental attorneys in conferences today with Bronley and his attorney and, in substance, are as follows:

Bronley advised Baker that Jones had told Bronley that Jones had testified before the grand jury and that Jones wanted to meet with Bronley and Baker to discuss the matters about which Jones had testified in order to get their stories straight. Baker responded "I think that's important," and said that he was agreeable to meeting with Bronley and Jones in Los Angeles tomorrow evening, March 25, 1965. Bronley called Jones back and advised Jones that Baker was agreeable to the meeting. The three men will meet in Los Angeles tomorrow evening.

The Criminal Division requests that the following additional investigative action now be taken to determine if Jones and Baker are endeavoring to obstruct the due administration of justice (18 USC 1563) or are in violation of other Federal criminal statutes.

I request that the FBI take necessary steps, in cooperation with Bronley, to witness, monitor, and mechanically or electronically record the meeting to be held among Baker, Bronley and Jones by means of an appropriate transmitting device attached to the person of Bronley. Bronley, upon the advice of counsel, has this day executed a written, signed consent for agents of the Federal Bureau of Investigation to take this action.

It is the judgment of the Criminal Division that the investigative action that is being requested herein would be violative of no Federal criminal statute, would not constitute an entrapment, and would not violate any of the constitutional rights of the parties involved.

The original and copies of Broasley's consent are being retained by the Criminal Division and will be made available to you upon request.



Files



March 26, 1965

Austin S. Mittler

ASH:gap

Robert G. Baker

At 10:30 A.M. I received a telephone call from Charlie Lyles. Mr. Lyles apparently was returning Mr. Moore's earlier call. Mr. Lyles indicated that our request of yesterday had progressed no further and that it apparently had reached a standstill.

Lyles immediately suggested what he thought might be a superior technique for handling this entire matter. He suggested that Bromley should contact Jones and Baker and inform them that he had just received a telephone call from attorneys of the Department of Justice and that he was being requested to appear before the grand jury next week. Mr. Lyles suggested that Bromley further state he had been told not to keep any appointments nor to discuss the matter prior to his grand jury appearance. Lyles' thinking was that this action by Bromley would prompt Jones and Baker to come to Washington in order to discuss the matter with Bromley prior to his grand jury appearance, and that this would enable the Bureau to control the situation and monitor any meetings that might occur. I indicated to Mr. Lyles that it was my thinking that we were now too far along with our present plans with Bromley and Sandground to reverse our position.

I then requested of Lyles and Basdek, who was then on an extension, to inform me of the status of the Los Angeles field office's efforts to locate the whereabouts of Baker's and Jones' rooms at the Beverly Rodeo and Beverly Wilshire, respectively, and the feasibility of Bureau agents occupying adjacent rooms. Basdek said that we "haven't done anything on it" and that this could only be handled in connection with the overall request.

I then told Lyles and Bendeck that I would like to make this the subject of a separate request, and they in turn said they did not think that this could be done.

I then related the above information to Howard Willens. It was decided that no action would be taken pending the outcome of discussions with Mr. Gafney of the Bureau of Narcotics, in view of the possibility that said bureau might be able to handle the entire matter.

V

TRANSCRIPT FROM HEARING

HELD, JUNE 25, 1968

MR. LYNCH: That is right, Your Honor, and for that purpose --

THE COURT: You have to start chasing this rabbit all the way through the teletypes and all through the inter-office communications.

MR. LYNCH: Your Honor, for instance, if the overhearing overheard Jones in an office in Las Vegas commenting on his golf game the previous day on the golf course, I would suggest that there we are getting into an area that is totally irrelevant that the Defendant know.

THE COURT: Unless it was a golf game with Baker or a golf game with a list of the sixty-two other witnesses in the case. I don't know. Doesn't the Supreme Court's action indicate that they are getting pretty fed up with the Court sitting in camera on these matters and not letting the defense counsel see what is going on?

MR. LYNCH: I don't know, Judge.

THE COURT: I don't either.

MR. LYNCH: I wish I did. But I would hate to be the person who tries to foresee what the Supreme Court is going to say the method of operation should be in this particular area.

I will say this: That we have had hearings in this sort of thing in a number of cases. The Carada case out of the Sixth Circuit, Bataglia case in the Seventh Circuit and Bataglia case in the Ninth Circuit, and in those cases the procedure was that where the premises of the defendant were the premises in which the device was placed, it is turned over because he has standing. We have to have some sort of legal guidelines to which to pin our expectations of a hearing. Standing is one of them. Similarly, we agree the Defendant would have standing.

THE COURT: I grant the standing problem. If you follow the procedure that Judge Jones followed in the Black case, where these problems were present, Judge Jones then sat in chambers for six weeks determining what material the defense would be permitted to see or what material they shouldn't be permitted to see or what material resulted in leads and, therefore, should be suppressed, and what material shouldn't.

Now that procedure, which puts the whole burden on the Court, is a procedure that is under question in the Supreme Court now in the case that you have been referring to, the Kolod case.

So I have been wondering, to avoid the possibility

that if that procedure were followed again this case would be proceeding down the road to reversal, whether the Department is prepared to obviate that by letting the Defendant see all the material that it is going to let the Court see.

MR. LYNCH: No, Your Honor, I don't believe the Department is in a position of doing that, permitting the Defendant to see all of that matter.

THE COURT: Let me ask you this question: Supposing I ordered it. Would you drop the indictment or would you comply with the order?

I suppose you have to go back and talk to the boss.

MR. LYNCH: We would have to talk to someone about that. I would ask for a fifteen-minute recess.

THE COURT: You would have at least that. But that may be the point where I am going to come out here.

MR. LYNCH: You understand the context in which that arises, Judge. The device is placed on Mr. McDowell's place of business and Mr. McDowell is the subject of unlawful electronic surveillance, and Mr. McDowell may be electronically surveilled for six months or a year, in the course of which he is talking about a number of things with a number of people, and on one occasion Mr. Jones walks into his office and discusses something with him of greater or lesser import

to themselves, but of no significance in so far as we urge to anything in this case.

In order for you to say that he should see all of those materials -- we don't question that he should see the materials wherein he is there or he is talking, but in order for him to see all the materials, why you are putting him in the position of being privy to conversations of Mr. McDowell over a period of many many months.

THE COURT: Which the Government had no business in having in the beginning.

MR. LYNCH: Judge, I am not here to defend that one. That is not my baby.

THE COURT: Let me ask you another question about this which has been in my mind. It is not raised by the Defendant's papers, I don't believe, but it has been very much in my mind.

What position does the Department take with respect to making available to the defense illegal eavesdropping surveillance of a witness who testifies for the Government?

MR. LYNCH: I am not sure we have been faced with that request.

THE COURT: Is it a Jencks Act statement?

MR. LYNCH: I would say -- let's look at it as a

Jencks Act statement, Your Honor.

THE COURT: It may be.

MR. LYNCH: That is a good analogy, because, if, for instance, this witness had four years ago been interviewed in connection with a highjacking case, and somehow or other the prosecutor knew that he had been a witness in a high-jacking case.

THE COURT: I am assuming it has some materiality to the case.

MR. LYNCH: If you are talking about materiality, if it would be an overhearing of a material question, yes, I think it would be Jencks Act material.

THE COURT: So you would be in a position in this case, if you are going to call Bromley, you would turn over to the Defendant all wiretaps that related to the issues in this case of Bromley, of Baker -- who else?

MR. LYNCH: Well, Baker.

THE COURT: Yes, Baker.

MR. LYNCH: They had a hearing in that one, Judge.

THE COURT: I am talking about if he is a witness.

MR. LYNCH: I am not sure he is going to be a witness in this case.

THE COURT: If he is a witness.



MR. LYNCH: If he is a witness, yes, but again I would urge -- I don't know because I am not that familiar with the details of the Baker overhearings, but I would urge that the prosecutors were able to satisfy the Court in that case that it had nothing to do with the Baker case; and I am confident that we could satisfy the Court to the same extent. That would, of course, mean that we would have to turn over the material to you for an in camera inspection, as we would Jencks Act material that had no relation to the case, that happens to be in our files from some other investigation or case that had occurred.

THE COURT: I have just been wondering what the attitude of the Department was about that.

To put it another way: Suppose, as I will be asking you at some point in this case, I asked you: Have you turned over to the Defendant all evidence in your possession bearing on the Defendant's lack of guilt.

MR. LYNCH: Yes.

THE COURT: And you will certify to me at some stage before we go to trial that you have.

Now, that requires not just a yes, answer, but it requires your being confident that there is not in all of this mass of wiretap material that your organization has

developed exculpatory statements that are beneficial to Jones.

MR. LYNCH: Well, we could answer that with confidence as to the overheard material of Jones.

THE COURT: I know, but that isn't what I am talking about.

MR. LYNCH: I realize that, but you are setting an almost impossible task.

THE COURT: I think I am. Therefore, what I am wondering about is that impossible and yet that is a rather fundamental proposition in the trial of criminal lawsuits. I wonder how the Government is going to meet that obligation if it is impossible.

MR. LYNCH: If it is spun out far enough, Judge, the Government wouldn't be able to, I don't believe.

THE COURT: Wouldn't be able to.

MR. LYNCH: Physically wouldn't be able to. Which means, of course, unless you hold this thing to reasonable bounds, you are in effect giving a free pass to everyone who has in any way been electronically surveilled.

THE COURT: Yes.

MR. LYNCH: Not only that, but why limit it to those who have been electronically surveilled? Why not in this

case require or suggest that the Government must search all of its files, all of its electronic surveillance files to come up with any exculpatory evidence. That, in itself --

THE COURT: That doesn't frighten me very much. But we do have something way short of that. We have a case which is involved with a great deal of electronic surveillance.

MR. LYNCH: Yes.

THE COURT: Some of this Defendant but other surveillance all around the periphery of this case involving some of the other names that are in the case. So we aren't really being abstract when we raise the question here, recognizing that there have to be some confines.

MR. LYNCH: I think there have to be some confines to the burden placed on the prosecution to come forward with material that, as Mr. Morgan puts it, may be favorable to the Defendant. That, of course, is a judgmental thing, as far as the prosecutor is concerned. He has to weigh whether or not one item could be considered favorable. How do you meet that kind of burden? Where you have specific statements or a witness to the proceeding, that is obviously a clear witness to one or the other of the transactions, of course, you know you have material in your file.

THE COURT: There are grey areas but there are also

some fairly black and white areas.

MR. LYNCH: Yes, the black and white areas I can understand.

THE COURT: Allowing for good faith, as I do, of the prosecutor, you still would have quite an enormous amount of material to look at.

I will read these papers on this. I want to give Mr. Morgan an opportunity, not now but in papers, to answer after he has had a chance to read them, which I don't think he has, any more than I did.

MR. MORGAN: May I make a few remarks?

THE COURT: I will hear you briefly. I want to meditate on it. I am troubled about the pervasive taint that takes place in these cases. I am troubled because apart from a violent personal dislike for that kind of conduct, I see, as a judge, the growing tendency of the Court to harden up on it, which I think is proper.

I don't know how to proceed. I don't like the idea of the Court sitting week-after-week in chambers reading the snoopings of the Government. I think the function of the Court is to be on the bench. I think the function of the Court is to try cases.

I have been in sort of this mood, Mr. Lynch, that

I want you to report to your superiors and to think about a little bit: That unless the Government is prepared to represent that as to some particular evidence the security of the United States is in some way involved, I don't see why it isn't appropriate to turn the material over to the defense and let them argue then in an adversary manner to the Court whether or not some of this evidence that you are proposing to use is or is not obtained from unlawful surveillance.

Now, I realize the national interest that is here, but most of this is just tawdry gossip and a lot of other stuff. If there is a real national interest here, I think the Court ought to be aware of it and have regard for it. But if all that is involved is whether the Court or counsel are to wade through all this material to determine whether or not the evidence can be introduced or is tainted because of its illegal source, it seems to me in our adversary system the Defendant ought to have the opportunity to look at it and that we shouldn't be in a position where you and I know all kind of things and the Defendant on trial in this case, on trial in a matter that may affect his livelihood as a lawyer, apart from anything else in the conviction, doesn't know what is going on. That I find a very uncomfortable

situation.

MR. LYNCH: I agree, but the alternative, Your Honor, is even more uncomfortable. The problem is this Defendant, as a result of what the Government says, knows that on A, B, C and D, he was overheard.

THE COURT: Yes.

MR. LYNCH: Now why any more than in X, Y and Z premises should he see all of the material in A, B and C premises only because we have said he was overheard at these particular premises, and that he was overheard only on certain occasions -- very few occasions when you consider the vast amount of overhearings that took place.

THE COURT: Where does he have his hearing when the Court announces, having looked at the material, there is no indication that the illegal surveillance has led to any of the evidence that is being introduced.

All Mr. Morgan has to do is to look at me and say: That is what you say, Judge. And it is a matter of opinion, to begin with. It isn't a matter of certainty.

MR. LYNCH: He gets the same hearing that he would get were I to submit Jencks material to you saying that these three pages are material to the case and these three pages are not material to any issue or any testimony in the case.

THE COURT: Yes.

MR. LYNCH: And you would look at it and say it either is or it is not. If you say it is not, you seal it and it goes to the Court of Appeals.

THE COURT: I think the analogy is sound, Mr. Lynch, but we are in a somewhat different position, if my fumbling around with this is correct.

When someone hands to the Court a piece of paper and says, this is a privileged document, this contains three pages that are not Jencks Act material, the determination of the Court is, first, immediate, and, second, it is within manageable confines. That document can be put in a sealed envelope; it can be made part of the record; and a reviewing court can determine whether or not the District Judge acted properly.

However, there is no review of this. There is no review of this. In the first place, what we are talking about is building blocks. Did this teletype lead to this inquiry. Did this inquiry lead to this piece of information; and did it all tie back to an illegal wiretap.

In other words, it is a chain, rabbit and hare proposition, and given the actual volume of it, which the Court is led to believe may be substantial, there is no review.



There is no way in a realistic sense, other than by the adversary proceeding, that the Court of Appeals or the Supreme Court can be expected to go through the process that took the District Judge six weeks in camera.

I am not deciding these things but trying to indicate to you my very deep concern about it. I would like to have you consider with your superiors the extent to which it may be feasible in this case, having in mind the Court's comments and some of the warning signals that are coming out of the Kolod case -- we have our antenna out -- to make available substantial portions at least of this material to the defense under such strictures as I would place on the defense with respect to their utilization in other cases or their publicity with respect to them. They would be treated as impounded materials, so we would deal with the matter in an adversary way and not in what seems to me to be kind of a monastery way, where the Court takes it all and broods over it and nobody knows whether the Court is looking at it carefully or isn't looking at it or understands it.

MR. LYNCH: I do not minimize the substantial problems that this sort of thing imposes, and I appreciate the Court's --

THE COURT: I am being very frank with you and telling



you what is in my mind. I am not trying to shirk work. If I am not doing this, I am doing something else.

I will now hear from Mr. Morgan, and then we will get down to the other parts of the case. I want to read your papers very carefully and next time we get together we will work out procedure on this, whatever it is to be.

MR. MORGAN: Your Honor, I will be very brief, because I don't assume we are at the point of disposing of my motion for discovery or other motions.

THE COURT: No.

MR. MORGAN: I do want to make these comments.

Number One, I think the Defendant has an absolute right to every recording made of the Defendant under Rule 16(a).

THE COURT: That isn't in dispute.

MR. MORGAN: It says so in so many words --

THE COURT: That is not in dispute.

MR. MORGAN: Let us take a recording made of Mr. Jones by electronic surveillance.

THE COURT: That is not in dispute. You have that. He offers that to you.

MR. MORGAN: Is that correct?

MR. LYNCH: We would disagree that material comes under Rule 16, but we will offer that to them.

VI

EXCERPT FROM CLIFFORD JONES'

GRAND JURY TESTIMONY

2816

1 A No.

2 Q Did you ever have a conversation in the presence  
3 of Mr. Glen Troop, wherein the payment of money to Robert G.  
4 Baker was discussed?

5 A No.

6 Q Have you ever caused or instructed any corporation  
7 or any other business entity in which you have an interest,  
8 to make a payment by either cash or check to Mr. Troop  
9 which cash or check was to be transmitted by Mr. Troop to  
10 Robert G. Baker?

11 A No, sir.

12 Q Do you know a gentleman by the name of Wayne M.  
13 Bromley?

14 A Yes.

15 Q Who is an attorney-at-law, in Washington, D.C.

16 A Yes, I know him.

17 Q Would you state to the Grand Jury the circumstances  
18 of your initial meeting with Mr. Bromley?

19 A I don't recall but I have known Wayne for several  
20 years. In fact, I knew him before he started practicing law,  
21 when he was working up on the Hill. I think I met him first  
22 then as a young fellow up there.

23 Q Approximately when was this, sir?

24 A Five years ago or so.

25 Q Do you recall the circumstances of your initial

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1 meeting with Mr. Bromley? Who introduced you?

2 A No. I do not. I don't recall who initially  
3 introduced me.

4 But you have been acquainted with Mr. Bromley since  
5 1960 and have seen him on occasion since that time?

6 Yes. Yes.

7 Q Have you ever had any business transactions with  
8 Wayne Bromley?

9 A Yes.

10 Q Would you state to this Grand Jury what business  
11 transactions you have had?

12 A Well, he is a lawyer here in Washington, D.C.,  
13 a young lawyer, and a few years ago, when First Western  
14 did retain him --

15 Q Would you give the full name of the  
16 corporation, sir?

17 A First Western -- it was either through First  
18 Western Savings or First Western Financial. I have forgotten  
19 which.

20 Q The First Western Savings and Loan Association  
21 or the First Western Financial Corporation?

22 A The First Western Savings -- I don't want to be  
23 certain about that one or the other, but I believe it  
24 was First Western Savings. Yes. I am sure it was.

25 Q Would you state to this Grand Jury the nature

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1 of the business transaction that you had with Mr. Bromley?

2 A Yes. We retained Mr. Bromley to watch for us  
3 as a lawyer, to watch and notify me of any -- or notify  
4 us of anything that might happen in the way of legislation  
5 that would affect our interests.

6 And at this time, Mr. Bromley was an attorney-at  
7 law here in Washington?

8 A Yes.

9 Q And do you recall what year it was that Mr. Bromley  
10 was hired by you?

11 A I don't recall but it was for a short time. This  
12 only lasted for a short period of months. I think it lasted  
13 about 12 months. Then we dispensed with his services.

14 Q Was there a written agreement entered to,  
15 between First Western Savings and Loan, or the First Western  
16 Financial Corporation, and Mr. Wayne L. Bromley?

17 A No.

18 Q For the performance of services?

19 A No. We just put him on a retainer.

20 Would you for the Grand Jury, tell us the nature  
21 of that retainer?

22 A We retained him as an attorney and that was the  
23 nature of it.

24 Q What was the sum of money sir, to be paid to Mr.  
25 Bromley?

1 A I think all together, over a period of -- we paid  
2 him so much a month.

3 Q What was the amount that Mr. Bromley was to be  
4 paid each month?

5 A I don't recall, exactly.

6 Q Approximately?

7 A I believe it was either \$500 a month or it  
8 might have been \$1,000 a month.

9 Q Now, to the best of your recollection, Mr. Jones,  
10 how many months did the payments to Mr. Bromley continue?

11 A I would say twelve or fifteen months. I don't  
12 recall. It was a period of time. Then we dispensed with  
13 his services.

14 Q Could you tell us whether it was First Western  
15 Financial or First Western Savings?

16 A I believe First Western Savings.

17 Q Was he hired at your direction?

18 A He was hired at my suggestion. Yes, sir.

19 Q Your suggestion; and who else participated in  
20 the decision to hire Mr. Bromley other than yourself?

21 To whom were those suggestions made?

22 A He was hired through the president of the  
23 association, Mr. Al Neumeyer.

24 Q Please spell that, sir?

25 A Albert N E U M E Y E R. Mr. Al Neumeyer.

1 But Mr. Heumeyer is no longer President of the  
2 association. He is no longer a director of it. He has retired.

3 Q Now, would it be correct to state that Mr. Bromley  
4 is no longer performing any services for either yourself,  
5 First Western Savings and Loan Association, or First  
6 Western Financial Corporation?

7 A That is correct.

8 Q The agreement for him to perform services has  
9 been terminated?

10 A Yes.

11 Q Would you state to the Grand Jury, Mr. Jones,  
12 the reason why Mr. Bromley was hired to perform services for  
13 you? Why Mr. Bromley? Did anybody recommend him to you?  
14 What special qualifications did he have?

15 A Well, I had known him at that time -- there were  
16 some matters that were pending here and some matters that  
17 were being considered that affected the savings and loan  
18 business.

19 - Q Do you recall those matters?

20 A Well, I recall the principal one. It was the tax  
21 that was being introduced to be levied upon savings and loans,  
22 the the manner in which the tax was to be levied. That  
23 was the important thing that was involved; but that is the one.

24 Q Why did you go to Mr. Bromley?

25 What special qualifications did he have?

1 A He was the only one I knew here, actually.

2 Q Now, did Mr. Troop recommend to you that Mr.  
3 Bromley be hired?

4 A No.

5 Q Did Mr. Baker recommend to you that Mr. Bromley  
6 be hired?

7 A I did ask Bobby. I told him what I had in mind  
8 and it was mentioned to him in a casual way.

9 Q Where did this conversation take place between  
10 yourself and Mr. Baker wherein you discussed the possible  
11 retention of Mr. Bromley?

12 A It took place in Mr. Baker's office.

13 Q And again, you don't recall just when this took  
14 place?

15 A No. I do not recall it.

16 Q It was some time in 1963?

17 A I could probably, maybe, reconstruct it by going  
18 back and getting my schedule or something but I don't recall.

19 Q Would you state to this Grand Jury what Mr. Baker  
20 said to you when you told him that you were thinking of  
21 hiring Mr. Bromley to perform service in First Western?

22 A Well, he did say that he was a very knowledgeable  
23 fellow about matters here in Washington. Of course, I knew he  
24 was young. I knew how long he actually had been practicing,  
25 which had been only a short time.

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1 Q Did Mr. Baker indicate that he had been involved  
2 with Mr. Bromley in any business transactions in which  
3 Bromley performed favorable services?

4 A No business transactions but I know from past  
5 history he used to be in the Capital and worked there.

6 Q You knew Bromley and Baker were close friends?

7 A Yes.

8 Q From the Capital?

9 A Yes. Surely.

10 Q Have you ever been engaged in any business deals  
11 in which Wayne L. Bromley, Robert G. Baker and yourself  
12 were involved?

13 A No. None whatsoever.

14 Q Have you ever paid or caused to be paid any sums  
15 of money to Wayne L. Bromley as a conduit for a payment  
16 to Robert G. Baker, for any purpose whatsoever?

17 A No.

18 Q Did you ever have a conversation in the presence  
19 of Wayne L. Bromley wherein the payment of money to Robert  
20 G. Baker was discussed?

21 A No.

22 Q Have you ever caused or instructed any corporation  
23 or other business entity in which you have an interest, to  
24 make any payment either by cash or check to Wayne L. Bromley  
25 which cash or check was to be paid or transmitted by Wayne  
L. Bromley to Robert G. Baker?

A Not that I know of, no.

BY MR. BITTMAN:

Q Mr. Jones, what services did Mr. Bromley perform?

A Well, he kept us informed about the various stages of the legislation performed -- I think the same service that people's representatives in Washington usually perform for organizations.

Is there any correspondence available in your files between Mr. Bromley and yourself?

A No. There is not. I don't have any correspondence.

This lawyer was representing you for over a year and never even wrote you a letter? You never wrote him a letter at all?

You are paying him \$500 a month or more?

He was not working for me. He was working for First Western but he did keep me informed. He kept Mr. Hoyer informed, I am sure -- I would think. He usually talked to me on the telephone. I was in Washington from time to time. I saw him when I was here in Washington.

Q Did he submit an expense account in addition to the retainer you were paying him?

A Not that I know of.

Q What other matters did Mr. Bromley report to you, other than this savings and loan tax matter?

A Well, that was the principal thing that we were interested in.

1 Q Have you talked to Mr. Bromley since you came  
2 to Washington?

3 A No. I have not talked to Mr. Bromley. I have not  
4 talked to Mr. Bromley in several months. I have not seen him  
5 or talked to him since, I would say, for the last several months.

6 Q When did his services cease?

7 A Well, it has been quite a number of months ago.  
8 I would say well, it would be more than a year  
9 ago -- in excess of that, I am sure.

10 Q Why were his services terminated?

11 A Just because he --

12 Q Were they unsatisfactory?

13 A We just did not feel that we needed him any more.  
14 There was not anything that he was performing that was  
15 worth while.

16 BY MR. MITTLER:

17 Q Was the legislation favorably acted upon?

18 A No. The tax was imposed. The tax was imposed.

19 BY MR. BITTMAN:

20 Q Do you know whether or not there is any correspondence  
21 which exists between Mr. Bromley and First Western  
22 Corporation?

23 A I don't know of any.

24 Q Who would be the proper person to direct a  
25 subpoena to, to determine if there is any correspondence

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1 which exists between Wayne Bromley and First Western?

2 A Well, if you would like me to, I will determine  
3 that for you.

4 Q If you could, we would appreciate that.

5 A If you would like, I will also get that to you  
6 immediately.

7 Q Did Mr. Bromley deal with anyone else, other than  
8 yourself or Mr. Neuberg that you know?

9 A No.

10 MR. BITTMAN: Okay.

11 BY MR. MITTLER:

12 Q Do you know a gentleman by the name of Harold Rivero?

13 A Not that I know of.

14 Q An employee of the Otis Elevator Company, Defense  
15 Division, Brooklyn, New York?

16 A No. Not that I ever recall meeting the man and I  
17 don't recall ever hearing the name before.

18 Q Have you ever had any business transactions with  
19 Harold Rivero?

20 A None whatsoever.

21 Q Have you ever been engaged in any business deals  
22 in which Harold Rivero, Robert G. Baker and yourself were  
23 involved?

24 A None whatsoever.

25 Q Have you ever retained Mr. Rivero to represent you  
an attorney or in any other capacity?

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1 A No. I never have.

2 Q Have you paid, or caused to be paid, a fee to  
3 Mr. Rivero for the performances of any services?

4 A None.

5 Q Have you paid, or caused to be paid, any sum of  
6 money to Harold Rivero as a conduit for payment to Mr. Robert  
7 G. Baker for any purpose whatsoever?

8 A None whatsoever.

9 Q Have you caused or instructed any other business  
10 entity or corporation to make payment by either cash or check  
11 to Harold Rivero which cash or check was to be paid or  
12 transmitted by Rivero to Robert G. Baker?

13 A No.

14 BY MR. BITTMAN:

15 Q When did you first discuss with Mr. Bromley  
16 the fact that he was going to be retained by either  
17 yourself or First Western?

18 I mean, you mentioned a conversation you had with  
19 Mr. Baker, wherein you discussed Mr. Bromley's qualifications.  
20 When did you initially discuss it with Mr. Bromley?

21 A I already discussed it with Mr. Bromley  
22 before that?

23 Q Was that in Washington..

24 A Yes, it was.

25 Q Did Mr. Bromley have a law office in Washington.

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1 A No. I did not discuss it with him at an office.  
2 I discussed it with him at the Capital.

3 Q Did you discuss this in Mr. Baker's office?

4 A Yes.

5 Q In Mr. Baker's office?

6 A Yes.

7 Q Was Mr. Baker present?

8 A He was not present.

9 Q Was Carolc Tyler present?

10 A She was not present. She might have been in the  
11 other office but she was not present in any discussions I had.

12 Q Could you state to the Grand Jury, to the best  
13 of your recollection, what conversation -- this was between  
14 yourself and Mr. Bromley on this occasion -- what he said;  
15 what you said?

16 A Well, I don't recall exactly but I told him that  
17 we were considering having someone in Washington look out  
18 for our interest during this period and for subsequent  
19 periods, and we discussed generally, that fact that, you  
20 know, he was practicing, and I asked him if he thought  
21 that he could look after this for us and the upshot of the  
22 whole conversation was I told him that I had in mind giving  
23 him a chance at it and see what he could do and we discussed  
24 the tax bill that had been and was still being proposed and  
25 the other legislation; I don't recall just exactly what it

1 all was but there has been a great deal in recent years  
2 concerning savings and loans and I told him that I did not  
3 really know anybody else that was practicing here in Washington,  
4 D.C., and I told him we might give him a chance at it.

5 He was very anxious and very happy to have an opportunity  
6 to do something like that and he did tell me that he was --  
7 I don't know -- he said he had several representations. I told  
8 him, "I am going to let you do it." We agreed on  
9 it, on the opportunity, the chance, for a while, before

10 -- I mean, when Bobby Baker came back -- and then I told  
11 Bobby Baker at that time what I was going to do and  
12 asked him what he thought about it.

13 I did ask him what he thought about it.

14 Q Was Bromley present when you talked to Baker?

15 A Bromley was present when Bobby first came back  
16 but he had gone when I told Bobby what I was doing and  
17 Bobby said he is a mighty good boy, and I think he  
18 will do all right for you.

19 This is about it.

20 The actual details and what was said, I don't  
21 recall at this time. It has been several years and to  
22 reconstruct an exact conversation is rather difficult.

23 Q Did Mr. Baker say, "Why don't you retain my law  
24 partner, Mr. Tucker?" You knew Mr. Tucker who was Mr. Baker's  
25 law partner?

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1 A I don't know as I ever met Mr. Tucker. I don't  
2 call meeting him. As I said earlier, I don't -- if I have  
3 ever met him it has been so casually, I don't remember  
4 what the man looks like. I don't remember having any conversation  
5 with Mr. Tucker, so I did not know Mr. Tucker. Mr. Baker did  
6 not suggest to me that I retain Mr. Tucker.

7 Q How often did Mr. Bromley contact you with respect  
8 to this representation in Washington?

9 A The contact was usually when I was in Washington,  
10 D.C.

11 Q Would you have a conversation with him every week?  
12 Every two weeks? Every month?

13 A No. No. Every couple of months and sometimes every  
14 three months. Whenever I would come to Washington, you see.

15 Q Did he submit either through the mail or hand to you  
16 reports or anything?

17 Did you write letters giving him instructions as  
18 to what you wanted done?

19 A He furnished me with copies of the pending legislation  
20 and things like that. Yes. He gave me over a period of time,  
21 substantial papers. You know, anything that affected  
22 the savings and loan business, of which there was a good deal,  
23 including bills and things like that.

24 Q Does this have anything to do with gambling --  
25 Las Vegas gambling?

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1 A Nothing.

2 Q Or other interests you had outside of the  
3 Continental United States?

4 A Nothing.

5 Q You indicated Bromley represented other people --  
6 other than the National Coal Policy Association.

7 Can you state who else Mr. Bromley represented?

8 A That is who he told me he represented.

9 Q Did he indicate to you he represented anybody  
10 else?

11 A No. I had forgotten but now that you mentioned it,  
12 that is the people he represented.

13 Q Were Mr. Baker and Mr. Bromley law partners  
14 as well as Tucker, to your knowledge?

15 A Not to my knowledge.

16 THE FOREMAN: Did you belong to the National  
17 Association of Building and Loan Associations?

18 THE WITNESS: Right.

19 We belong to one of them. I don't know just which.  
20 We belong to the National Association, I am pretty sure.

21 THE FOREMAN: The legislation involved concerned  
22 all building and loan associations, not particularly the  
23 one you were involved in?

24 A It concerned all building and loan associations.

25 THE FOREMAN: Then my thought would be, did not

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1 the Association keep up with the legislation and why  
2 would your firm, particularly, need to hire a representative  
3 if the information was available through the Association.

4 THE WITNESS: Yes. They do, but we thought we  
5 wanted someone else and I am sure that probably many of  
6 them do have their own representation in Washington.

7 THE FOREMAN: In addition to the representation  
8 of the Association?

9 THE WITNESS: Yes. Yes. I think nearly all of  
10 them do.

11 MR. BITTMAN: I think that is it, Mr. Jones.

12 We appreciate very much your coming all the  
13 way from Las Vegas to appear before the Grand Jury.

14 Is it agreeable to you that we can make copies  
15 of the documents that you have brought with you to the  
16 Grand Jury pursuant to subpoena? Then we will return them  
17 to you by registered mail.

18 THE WITNESS: Yes. I will just leave them with  
19 you. When you finish with them, you can return them.

20 MR. BITTMAN: Thank you very much.

21 THE WITNESS: If you need the originals, you can  
22 keep the originals, as far as I am concerned, if you want  
23 to retain them until you are through.

24 MR. BITTMAN: Fine. Thank you very much.

25 (Whereupon, at 12:45 p.m., the hearing was adjourned  
until Tuesday, March 23, 1965 at 9:15 a.m.)



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 22, 529

---

UNITED STATES OF AMERICA,

Appellant

v.

CLIFFORD A. JONES,

Appellee

---

Appeal From the United States District  
Court For The District of Columbia

---

SUPPLEMENTAL BRIEF FOR APPELLEE

---

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United States Court of Appeals  
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FILED MAY 2 1969

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22, 529

---

UNITED STATES OF AMERICA,

Appellant

v.

CLIFFORD A. JONES,

Appellee

---

Appeal From The United States District  
Court For The District Of Columbia

---

SUPPLEMENTAL BRIEF FOR APPELLEE

---

INTRODUCTION

This case poses for determination the question of whether certain evidence against appellee, Clifford A. Jones, obtained by the Government by surreptitious electronic surveillance ought to be suppressed. Essentially, the case calls into play Jones' Fourth Amendment right to be free from unreasonable Governmental search and seizure. The District Court below, by the Hon. Gerhard A. Gesell, ordered the evidence suppressed.<sup>1</sup> The

---

<sup>1</sup>United States v. Jones, 292 F.Supp. 1001 (D.D.C. 1968), appeal docketed, No. 22, 529, D.C. Cir., Nov. 29, 1968.

District Court's decision rested in a major aspect<sup>2</sup> squarely upon the Supreme Court's decision in Katz v. United States.<sup>3</sup>

Subsequently, on March 24, 1969, the Supreme Court announced the following rule in Desist v. United States:<sup>4</sup>

"[W]e hold that Katz is to be applied only to cases in which the prosecution seeks to introduce the fruits of electronic surveillance conducted after December 18, 1967 [the date of the Katz opinion]."<sup>5</sup>

The electronic surveillance involved in the instant case was conducted by the Government in March of 1965.

In his initial brief to this Court, Jones relied extensively upon the Katz decision,<sup>6</sup> as had the District Court below. Inasmuch as the Desist case appeared to cast the applicability of Katz to this case into doubt, Jones sought<sup>7</sup> and was granted leave by this Court<sup>8</sup> to brief the question of the continued relevance of Katz to this case.

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<sup>2</sup>292 F. Supp. at 1006-1008.

<sup>3</sup>389 U.S. 347 (1967).

<sup>4</sup>37 U.S.L.W. 4225 (U.S. Mar. 24, 1969).

<sup>5</sup>37 U.S.L.W. at 4228.

<sup>6</sup>Brief for Appellee at 27-41.

<sup>7</sup>Motion for Leave to File Supplemental Brief and for Continuance of Scheduled Oral Argument, United States v. Jones, No. 22, 529 (D. C. Cir., filed Mar. 26, 1969).

<sup>8</sup>Order, United States v. Jones, No. 22, 529 (D. C. Cir., filed April 3, 1969).



It is noteworthy that Jones' reliance on the retroactive effect of Katz was neither unwarranted nor unshared. The Katz decision itself declared:

"The Government urges that, because its agents relied upon the decisions in Olmstead [v. United States, 277 U.S. 438 (1928)] and Goldman [v. United States, 316 U.S. 129 (1942)], and because they did no more here than they might properly have done with prior judicial sanction, we should retroactively validate their conduct. That we cannot do. [Emphasis added.]"<sup>9</sup>

Furthermore, Jones' reading of the applicability of Katz to this case is shared by the dissenting opinions of Justices Douglas, Harlan and Fortas in Desist.<sup>10</sup> And other Courts of Appeals, although disagreeing on the meaning of Katz, in terms of its dispositive significance, as distinguished from its applicability, in terms of its retroactive effect, have not questioned its applicability.<sup>11</sup> Indeed, this very Court has heretofore

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<sup>9</sup>389 U.S. at 536.

<sup>10</sup>37 U.S. L. W. at 4229-4236. Of even greater significance is the fact that the vote on retroactivity in Desist appears to be a 4 to 4 tie. That is, Mr. Justice Marshall did not participate in the decision and Mr. Justice Black concurred only in the result, not because he favored non-retroactivity but because he thought Katz was wrongly decided. He adhered to his dissent in Linkletter v. Walker, 381 U.S. 618, 640-653 (1965), wherein he favored retroactive application of a constitutional exclusionary rule. Thus, in fact, Mr. Justice Black's concurrence in Desist aligned him with Justices Douglas, Harlan, and Fortas in disapproving of the Court's failure to give Katz retroactive effect. 37 U.S. L. W. at 4229.

<sup>11</sup>Koran v. United States, 4 Cr. L.R. 2401 (5th Cir. Jan. 27, 1969); United States v. Kaufer, 4 Cr. L.R. 2333 (2d Cir. Jan. 14, 1969), aff'd mem., 5 Cr. L.R. 4001 (U.S. Apr. 1, 1969); United States v. White, 405 F.2d 838 (7th Cir. 1969) (en banc), cert. granted, 5 Cr. L.R. 4009 (U.S. Apr. 7, 1969); Holt v. United States, 404 F.2d 914 (10th Cir. 1968); Doty v. United States, 3 Cr. L.R. 2220 (10th Cir. June 4, 1968), petition for rehearing granted; Dryden v. United States, 391 F.2d 214 (5th Cir. 1968); Dancy v. United States, 390 F.2d 370 (5th Cir. 1968); Hansford v. United States, 390 F.2d 373 (5th Cir.), cert. denied, 391 U.S. 915 (1968).

assumed that Katz was relevant (or applicable, in terms of retroactive effect) to a discussion of a motion to suppress evidence obtained by the Government by electronic surveillance prior to December 18, 1967, the date of the Katz decision.<sup>12</sup> Thus, although the meaning of Katz, i.e., whether it is controlling in cases where one party to a surreptitiously monitored conversation consents to the surveillance, has been the subject of discussion and disagreement in the courts, its applicability, i.e., its relevance at all, to the discussion of eavesdropping had been widely assumed before Desist.

The Government thought no better of its argument urging non-retroactive application of Katz, raised for the first time in this Court,<sup>13</sup> than to abandon it in reply<sup>14</sup> to Jones' argument<sup>15</sup> favoring retroactive consideration of Katz.

### ARGUMENT

- I. Cases Antedating Katz Require The Same Result As That Reached In Katz; This Court Is Not Foreclosed From Reaching The Same Result As Announced in Katz, But Based On Other Authorities.

In Katz v. United States,<sup>16</sup> the Supreme Court articulated certain considerations concerning the ambit of the protection afforded

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<sup>12</sup> Baker v. United States, 401 F.2d 958, 983 (1968).

<sup>13</sup> Brief for Appellant at 22-23.

<sup>14</sup> Reply Brief for Appellant. This brief is silent on the subject of retroactivity.

<sup>15</sup> Brief for Appellee at 40-41.

<sup>16</sup> 389 U.S. 347 (1967).

by the Fourth Amendment. It said that the reach of the Fourth Amendment "cannot turn upon the presence or absence of a physical intrusion into any given enclosure"<sup>17</sup> and that "the Fourth Amendment protects people, not places."<sup>18</sup> And in Desist v. United States,<sup>19</sup> the Supreme Court put this gloss on its holding in Katz:

"We concluded that since every electronic eavesdropping upon private conversations is a search or seizure, it can comply with constitutional standards only when authorized by a neutral magistrate upon a showing of probable cause and under precise limitations and appropriate safeguards."<sup>20</sup>

In the instant case there was electronic eavesdropping upon the private conversations of Jones without the prior authorization of a neutral magistrate upon a showing of probable cause. This much is not disputed.<sup>21</sup>

Silverman v. United States<sup>22</sup> is ample authority for a finding by this Court that Jones' Fourth Amendment rights were violated by the

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<sup>17</sup> 389 U.S. at 353.

<sup>18</sup> 389 U.S. at 351.

<sup>19</sup> 37 U.S.L.W. 4225 (U.S. Mar. 24, 1969).

<sup>20</sup> 37 U.S.L.W. at 4226.

<sup>21</sup> There is dispute as to whether the alleged consent of Bromley to the eavesdropping takes this case from under the rationale of Katz. Jones has argued that the consent of one of the parties to a conversation does not distinguish Katz. This argument will not be repeated herein, it being assumed that if Jones is right in his assessment of the irrelevance of one-party consent, then that argument also attaches to pre-Katz decisions which Jones hereafter urges require the conclusion that a trespass is not an essential prerequisite to a finding of a violation of the Fourth Amendment, i.e., cases that reach the same essential conclusion as Katz.

<sup>22</sup> 365 U.S. 505 (1961).

Government even in the absence of a trespass by it upon any premises wherein Jones justifiably assumed that his conversations were private. In Silverman, the Supreme Court found that eavesdropping by means of a "spike mike"--which did, in fact, trespass upon defendant's premises--violated the Fourth Amendment. The Court made it perfectly clear, however, that its decision did not turn upon the presence or absence of a physical trespass:

"But decision here does not turn upon the technicality of a trespass upon a party wall as a matter of local law. It is based upon the reality of an actual intrusion into a constitutionally protected area."<sup>23</sup>

In the same case, the Court declined to reconsider its decision in Goldman v. United States,<sup>24</sup> wherein it had found no Fourth Amendment violation inasmuch as the eavesdropping had been accomplished without trespass. The Court declined to re-examine Goldman in Silverman because it had found a trespass-in-fact activity, which it had never sanctioned. But the Court ended its discussion with this clear warning: "We find no occasion to re-examine Goldman here, but we decline to go beyond it, by even a fraction of an inch."<sup>25</sup> The Court's meaning is clear: In the future it was not going to require a finding of trespass as prerequisite to a determination that the Fourth Amendment had been violated.

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<sup>23</sup>365 U.S. at 512.

<sup>24</sup>316 U.S. 129 (1942).

<sup>25</sup>365 U.S. 512.

Supreme Court cases following Silverman demonstrate that that case stood for the proposition that the Fourth Amendment protected a citizen's privacy, whether or not a search was occasioned by a trespass. Warden, Maryland Penitentiary v. Hayden,<sup>26</sup> Berger v. New York.<sup>27</sup>

And this Court has observed that Silverman clearly indicated that the protection afforded by the Fourth Amendment "is not against technical trespasses but against invasions of privacy."<sup>28</sup> Accordingly, having recognized that Silverman is authority for the proposition that the Fourth Amendment may be violated wherein private conversations are monitored by the Government without trespass, which is precisely the case in the instant proceeding, this Court should conclude that evidence of Jones' conversation with Bromley should be suppressed. The propriety of such a conclusion is suggested by these logically unassailable observations of Mr. Justice Harlan, dissenting in Desist:

"Imagine that the Second Circuit in the present case had anticipated the line of reasoning this Court subsequently pursued in Katz v. United States ... concluding--as this Court there did--that 'the underpinnings of Olmstead and Goldman have been so eroded by our subsequent decisions that the "trespass" doctrine there enunciated can no longer be regarded as controlling.' \*\*\* Would we have reversed the case on the ground that the principles the Second Circuit had announced--though identical with those in Katz--should not control because Katz is not retroactive? To the contrary, I venture to say that we would have taken satisfaction that the lower court had reached the same conclusion we subsequently did in Katz. If a 'new' constitutional doctrine is truly right,

<sup>26</sup> 387 U.S. 294, 305 (1967).

<sup>27</sup> 388 U.S. 41, 51-52 (1967).

<sup>28</sup> Baker v. United States, 401 F.2d 958, 983 (1968).

we should not reverse lower courts which have accepted it; nor should we affirm those which have rejected the very arguments we have embraced."<sup>29</sup>

II. Bromley's Search In Jones' Hotel Suite Was Solely For Testimonial Utterances And Was Therefore Unreasonable In Violation Of The Fourth Amendment.

The record in this proceeding fairly establishes that Bromley was the agent or instrumentality of the Government in its calculated endeavor to "get" Jones. Thus, the testimony reveals that but for the Government's suggestion, Bromley would not have returned Jones' telephone call early on the morning of March 23, 1965--the first monitored call. Likewise, during that call, Bromley lied to Jones at the Government's suggestion in hopes of eliciting some damaging response from Jones. The Government then suggested and engineered a succession of seven telephone calls from Bromley to Jones and Baker for the sole purpose of arranging a meeting of the three which the Government planned to monitor. The Government suggested that Bromley wear a hidden transmitter to broadcast the meeting at the Beverly Wilshire and Bromley obeyed.

Thus, from the moment Bromley entered Jones' hotel suite, he was the Government's agent. He was the Government's only access to the conversation that followed, because without him, the conversation would not have occurred at all. And it is equally clear that Bromley's sole purpose for being in Jones' hotel suite was to conduct a search

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<sup>29</sup>37 U.S. L. W. at 4229-4230.

for testimonial utterances . Jones, of course, had no reason to expect that Bromley was anything other than a friend and business associate; he did not know that Bromley was there as a Government agent. Flatly stated, Bromley purposely deceived Jones, both as to the purpose of the conversation and as to his (Bromley's) status, i.e., a Government agent. Thus, rightly viewed, it becomes apparent that evidence of the Beverly Wilshire conversation must be suppressed because it resulted from a warrantless search and would have the effect of requiring Jones to unwillingly give evidence against himself in violation of his Fifth Amendment rights. In Gouled v. United States,<sup>30</sup> a Government agent, upon the pretense of being nothing other than a friend, was admitted by the defendant to the latter's office, and thereafter secretly, without a warrant, carried away papers of the defendant which were ultimately used as evidence against him. As to defendant's assertion that his Fourth Amendment rights had been violated, the Supreme Court said:

"The prohibition of the Fourth Amendment is against all unreasonable searches and seizures and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers would be an unreasonable and therefore a prohibited search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home or office and of the papers of the owner would be as much invaded and the search and seizure would be as much against his will in the one case as in the other, and it must therefore be regarded as equally in violation of his constitutional rights."<sup>31</sup>

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<sup>30</sup> 255 U.S. 298 (1921).

<sup>31</sup> 255 U.S. at 305-306.



As to the defendant's Fifth Amendment rights, the Supreme Court held:

"In practice the result is the same to one accused of crime, whether he be obliged to supply evidence against himself or whether such evidence be obtained by an illegal search of his premises and seizure of his private papers. In either case he is the unwilling source of the evidence, and the Fifth Amendment forbids that he shall be compelled to be a witness against himself in a criminal case."<sup>32</sup>

Bromley's activity here is legally indistinguishable from that condemned in the Gouled case.<sup>33</sup> He gained access to Jones' hotel suite and ensuing conversation only by deceit, by disguising the fact that he was actually a Government agent, and he thereafter secretly "seized" Jones' testimonial utterances.<sup>34</sup>

Numerous other cases have held that warrantless searched conducted by Government agents, representing themselves to be otherwise, are unreasonable and therefore unlawful--the deceit vitiating what otherwise might have been considered consent by the defendant to the search.<sup>35</sup>

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<sup>32</sup> 255 U.S. at 306.

<sup>33</sup> Although in Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294 (1967), the Supreme Court reversed certain aspects of the "mere evidence" rule which it had adhered to in Gouled, it was careful to let that rule stand insofar as it concerns testimonial evidence. 387 U.S. at 303.

<sup>34</sup> There is no doubt that conversation is subject to seizure just as fully as are tangible objects. Berger v. New York, 288 U.S. 41 (1967); Wong Sun v. United States, 271 U.S. 471 (1963); Silverman v. United States, 365 U.S. 505 (1961).

<sup>35</sup> United States v. Cook, 213 F.Supp. 568 (E.D. Tenn. 1962); United States v. Reckis, 119 F.Supp. 687 (D. Mass. 1954); United States v. Guerrina 112 F.Supp. 126 (E.D. Pa. 1953); cf. Gatewood v. United States, 93 U.S. App. D.C. 226, 209 F.2d 789 (1953).



The Government will no doubt respond that Bromley's deceitful entry into Jones' hotel suite was exactly of the same nature of conduct condoned by the Supreme Court in Hoffa v. United States.<sup>36</sup> However, the question in Hoffa was whether the informer could himself testify as to conversations he had overheard. In Hoffa, the informer did not contemporaneously secretly record or transmit the conversation, as Bromley did here. Moreover, the question of whether Bromley can testify is not presently before this Court. Be that as it may, one commentator has pointedly exposed the fundamental conceptual difficulty inherent in the Hoffa decision:

"The most fundamental objection to the rationale in Hoffa is that it really turns on a misposing of the issue. It sounds reasonable to say that Hoffa was 'relying upon his misplaced confidence that Partin would not reveal his wrongdoing'. And if this confidence was 'misplaced', the inference is that it was not reasonable, and hence not entitled to protection. Everyone must, of course, take the risk that friends will repeat what they have heard. But the reality to which Hoffa was exposed was not that Partin would decide to tell but that he was in fact working for the government at the very time Hoffa spoke. Partin did not turn out to be a friend who later 'revealed wrongdoing'. He was exactly what he did not appear to be—a government agent—and Hoffa was induced to speak to him because of this very deception. It is one thing to say that people must take the risk that their friends will report wrongdoing. It is another to say that people must take the risk that their friends have already promised to report whatever they do and say to the government."<sup>37</sup>

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<sup>36</sup>385 U.S. 293 (1966).

<sup>37</sup>Kitch, Katz v. United States: The Limits of the Fourth Amendment, in The Supreme Court Review 133, 151-152 (Kurland ed. 1968).

It would be an unnatural thing indeed for this Court to hold that a citizen may be assured of the protection of the Fourth Amendment if his conversation is secretly seized by a stranger who is a disguised Government agent but that he must take his chances if the disguised Government agent was apparently nothing other than a friend.

CONCLUSION

Considering the foregoing arguments and those advanced in Jones' Brief for Appellee in this proceeding, the District Court's decision ordering the evidence in question suppressed should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas M. P. Christensen, attorney for appellee, Clifford A. Jones, hereby certify that copies of the foregoing "Supplemental Brief For Appellee" in No. 22, 529, United States of America v. Clifford A. Jones, were served May 2, 1969, by regular mail, upon the following:

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,529

UNITED STATES OF AMERICA,  
Appellant

v.

CLIFFORD A. JONES,  
Appellee

Appeal From the United States District  
Court For The District of Columbia

SUPPLEMENTAL BRIEF FOR APPELLANT

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United States Court of Appeals  
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FILED MAY 24 1969

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QUESTIONS PRESENTED

I

WHETHER EVIDENCE OF JONES' CONVERSATIONS BY ELECTRONIC SURVEILLANCE CONDUCTED IN MARCH 1965, IS ADMISSABLE AT JONES' FORTHCOMING TRIAL AND NOT SUBJECT TO SUPPRESSION UNDER KATZ v. UNITED STATES.

II

WHETHER BROMLEY'S PRESENCE IN THE LOS ANGELES HOTEL ROOM AT CLIFFORD JONES' INVITATION WAS NEITHER A VIOLATION OF JONES' PRIVACY, NOR OF HIS FOURTH AND FIFTH AMENDMENT RIGHTS.



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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,529

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UNITED STATES OF AMERICA,  
Appellant

vs.

CLIFFORD A. JONES,  
Appellee

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Appeal From The United States District Court  
For The District of Columbia

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SUPPLEMENTAL BRIEF FOR THE APPELLANT

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INTRODUCTION

The supplemental papers filed by appellee in this appeal and the instant reply by the appellant are occasioned by the decision of the United States Supreme Court in Desist v. United States, \_\_\_\_\_ U.S. \_\_\_\_\_, 37 U.S.L.W. 4225 (March 24, 1969). Desist held that the decision of the Supreme Court in Katz v. United States, 389 U.S. 347 (1967) would not be retroactively applied, so as to exclude evidence of warrantless electronic eavesdropping, not involving a physical trespass, if that eavesdropping occurred before December 18, 1967 - the date of the decision in Katz.

The Court below had suppressed certain evidence of Clifford Jones' conversations obtained by electronic surveillance, relying in part on Katz. United States v. Jones, 292 F. Supp. 1001 (D.D.C. 1968). The United States appealed from this order of suppression arguing, inter alia, that because the Government had



obtained the prior consent of Wayne Bromley, one of the parties to Jones' conversations, to conduct electronic surveillance of Bromley's conversations with Jones, then Katz (which dealt with surreptitious electronic surveillance) was not applicable to the facts of this case. However, in its initial brief, the United States specifically argued to this Court that regardless of the applicability of Katz to consensual electronic surveillance, Katz should not be given retroactive effect to the Government's monitoring of Jones which took place in March 1965. This Court and the appellee were referred to the then pending case of Desist v. United States, supra, wherein this issue had been raised before the Supreme Court. (Appellee's brief, pps. 21-22)

It is both incorrect and misleading for Jones to assert that the retroactivity of Katz was generally assumed before Desist. [Jones Supplemental brief, p. 3] Indeed one of the cases Jones cites for this assertion specifically declined to rule on the retroactivity of Katz.

"Since we hold that Katz v. United States has no application to the facts of this case there is no need to consider the contention of the government that its holding should not be applied retroactively."

United States v. Kaufer, 4 Cr.L. 2333 (2d Cir. 1969) aff'd \_\_\_ U.S. \_\_\_, 5 Cr.L. 4001 (Apr. 1, 1969).

Moreover, it is absurd for Jones to contend that the United States abandoned its retroactivity argument by not reiterating its initial arguments in the Government's reply brief. [Jones Supp. brief, p. 4] A reply brief must reply to an argument made by an adverse litigant. Jones' appellee brief ignored the pendency of Desist and cited Katz itself for the proposition that Katz was not retroactive, although the issue could hardly have been raised in that case. [Appellee's brief, pps. 40-41].

ARGUMENT

I

EVIDENCE OF JONES' CONVERSATIONS OBTAINED BY ELECTRONIC SURVEILLANCE CONDUCTED IN MARCH 1965, IS ADMISSABLE AT JONES FORTHCOMING TRIAL AND NOT SUBJECT TO SUPPRESSION UNDER KATZ v. UNITED STATES.

The evidence suppressed by the Court below was derived from electronic surveillance conducted during March 1965. The methods of obtaining this evidence are outlined in the Statement of the Case in the Appellants' brief in this case [pps. 2-13]. All of this electronic surveillance was clearly lawful when conducted. The type of monitoring used to record Wayne Bromley's telephone conversations with Jones has been judicially approved in similar cases. Rathbun v. United States, 355 U.S. 107 (1957); Rodgers v. United States, 369 F.2d 944 (10th Cir. 1966); United States v. Ballou, 348 F.2d 467 (2d Cir. 1964). The transmission and recordation of Wayne Bromley's conversations with Jones and Baker was proper under Lopez v. United States, 373 U.S. 427 (1963). None of the electronic surveillance of Bromley's conversations with Jones involved an illegal trespass onto any property, and thus did not violate Jones' Fourth Amendment rights under the rationale of Goldman v. United States, 316 U.S. 129 (1942). At the time the Government monitored Jones in March 1965, its conduct was legally and constitutionally proper.

The Government has consistently maintained that Katz v. United States, 389 U.S. 347 (1967) was not applicable to the consensual monitoring directed against Jones. The Court below and Jones, however, have based their arguments on the unconstitutionality of the Government's conduct squarely on the subsequent decision in Katz.

"Disposition of this case is controlled  
by Katz v. United States"

[Appellee's brief, p. 29]

The Supreme Court in Desist v. United States, \_\_\_ U.S. \_\_\_ 37 U.S.L.W. 4225 (Mar. 24, 1969) has rejected that argument holding that the constitutionality of electronic surveillance conducted before December 18, 1967, not to be determined by reference to the decision in Katz.

In Desist the Court ruled on the Government's electronic monitoring of conversations taking place in a hotel room. The monitoring did not involve a physical trespass and occurred before the date of the decision in Katz. The Supreme Court explicitly considered the effect of Silverman v. United States, 365 U.S. 505 (1961) on this monitoring and held it to be constitutional under pre-Katz decisions. [ Desist, slip opinion, pps. 4-5 ] The Court further held that since the conduct of the Government was lawful when conducted, the exclusionary rule stemming from its subsequent decision in Katz would serve no deterrent purpose and Katz would not be given retroactive effect.

The instant appeal is governed by Desist. The Governments' electronic surveillance was clearly constitutional before Katz, and even if Katz were otherwise applicable the Supreme Court has held that evidence derived from it should not be excluded from trial. In an effort to avoid the plain effect of Desist on this case, Jones asks this Court to disregard Desist on two grounds, both untenable.

First, Jones argues that this Court could approve the suppression of the instant electronic surveillance based on authorities antedating Katz. Secondly, Jones suggests that based on his head count of the justices' voting in Desist, the case has no precedential value. [ Jones' Supp. brief, p.3 ] The Court in Desist made clear that before Katz, electronic

surveillance which did not involve a physical trespass, was constitutionally proper.

"And in Silverman v. United States, 365 U.S. 505, we had cautioned that the scope of the Fourth Amendment could not be ascertained by resort to the "ancient niceties of tort or real property law." 365 U.S., at 511. But the assumption persevered that electronic surveillance did not offend the Constitution unless there was an "actual intrusion into a constitutionally protected area." While decisions before Katz may have reflected growing dissatisfaction with the traditional tests of the constitutional validity of electronic surveillance, the Court consistently reiterated those tests and declined invitations to abandon them. However clearly our holding in Katz may have been foreshadowed, it was a clear break with the past, and we are thus compelled to decide whether its application should be limited to the future."

Desist, supra, slip opinion, pps. 4-5.

This Court could not, therefore, affirm the suppression of the Government's electronic surveillance of Jones based on Silverman, for if Silverman is applicable to the instant electronic surveillance it would also have been sufficient to invalidate the electronic surveillance directed against Desist.

More recent decisions of the Supreme Court confirm the Government's view that Desist compels a reversal of the suppression order of the Court below. Jones notes that the Supreme Court affirmed the Second Circuit's decision in United States v. Kaufer, 4 Cr.L 2333 (2d Cir. 1969) [Jones Supp. brief, p.3] but does not point out that the affirmance was based on Desist. [See copy of slip opinion in Kaufer, attached supra as appendix a] The facts in Kaufer are nearly identical with those of the instant case. The Government suspecting that Kaufer was attempting to bribe an Internal Revenue agent listened over an extension telephone to telephone conversations between the agent and Kaufer. When the agent met with Kaufer he was equipped with a transmitter and recorder, and tapes of the conversation were made. The Second Circuit held that on these facts no violation of Kaufer's Fourth Amendment rights occurred. The Supreme Court affirmed citing Desist. Kaufer v. United States, \_\_U.S.\_\_ (April 1, 1969).

Kaufer clearly shows that Desist is a governing precedent <sup>1/</sup> when applied to the type of consensual monitoring involved both in Kaufer and the instant appeal. The Supreme Court's consideration of pre-Katz cases (notably Silverman, supra.) in Desist itself foreclosed the possibility that cases antedating Katz could provide a conceptual underpinning for an affirmance of the Court below's suppression order. Essentially, Jones is asking this Court to disregard a Supreme Court opinion less than two months old, and follow the dissenting opinions. That such an argument must be made is as indicative as the Supreme Court's subsequent opinion in Kaufer that the order of the District Court must be reversed.

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<sup>1/</sup> Justices Fortas and Douglas who dissented in Desist explicitly stated that Desist was the binding precedent on the retroactivity of Katz. This forced them to dissent solely on statutory grounds from the denial of certiorari in Hanna v. United States, \_\_\_ U.S. \_\_\_, 5 Cr.L 4041 (1969), n. 1.

BROMLEY'S PRESENCE IN THE LOS ANGELES HOTEL ROOM AT CLIFFORD JONES' INVITATION WAS NEITHER A VIOLATION OF JONES' PRIVACY, NOR OF HIS FOURTH AND FIFTH AMENDMENT RIGHTS.

On March 26, 1965, Wayne Bromley and Robert G. Baker went to the Beverley Wilshire Hotel in Los Angeles. There they met with Clifford Jones, who invited them into his hotel suite in order that they could discuss the pending District of Columbia Grand Jury investigation into Baker's affairs. As far as the record indicates, Jones was present during the entire meeting, and not only was aware of Bromley's presence, but specifically intended that Bromley hear everything that was said. (A 568-571)

Jones now claims that Bromley's presence in his hotel room was an unreasonable search and seizure under the Fourth Amendment, citing Gouled v. United States, 255 U.S. 298 (1921). A comparison of the facts of that case with those outlined above demonstrates the inapplicability of Gouled to the instant case. In Gouled an army private attached to the Intelligence Department visited Gouled at his office on the pretext of paying a friendly call. In Gouled's absence, the soldier seized some of Gouled's papers and secretly carried them away. Gouled was unaware that the soldier had taken the papers from the premises until the private took the witness stand against Gouled at his trial. It was this warrantless, secret search for evidence that ran afoul of the Fourth Amendment in Gouled.

The crucial distinction between Gouled and the instant case is immediately apparent. Bromley did not overhear Jones' words by stealth or in Jones' absence. Rather Jones willingly talked to Bromley, and knew exactly how much information Bromley carried away with him. Bromley took away (either by memory or transmitter) exactly what Jones intended him to hear and no more. In Lewis v. United States, 385 U.S. 206 (1966) a narcotics dealer invited a federal undercover agent to his home and sold narcotics



to him. On appeal of his conviction the dealer relying on Gouled claimed that the undercover agent's presence in his home was a warrantless search and seizure violative of his Fourth Amendment rights. The Supreme Court affirmed Lewis' conviction and distinguished Gouled as being factually inapplicable to a situation wherein, "During neither of his visits to petitioners home did the agent see, hear, or take anything that was not contemplated, and in fact intended by petitioner as a necessary part of his illegal business."

385 U.S. at 210. Neither Bromley nor the agent in Lewis ransacked the premises in the defendant's absence, yet it is this kind of conduct against which Gouled is directed.

The Supreme Court reaffirmed the inapplicability of the Gouled rationale to factual situations similar to the instant case in Hoffa v. United States, 385 U.S. 293 (1966).<sup>2/</sup>

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<sup>2/</sup> Both the Court below (A. 26) and Jones (Appellee brief, p. 32; Supplemental brief, p. 11) have consistently sought to skirt the applicability of the Hoffa and Lewis cases on the ground that they do not involve electronic surveillance. The essential emptiness of this argument is revealed by Jones' reliance on Gouled which also does not involve electronic surveillance, but does explore the scope of the Fourth Amendment's protection. A central issue of this case is whether the Fourth Amendment reaches situations wherein a suspect talks to a person who secretly is cooperating with the Government. The presence or absence of contemporaneous electronic recording of that conversation should not effect an analysis of whether or not that recurring factual situation involved a Fourth Amendment deprivation. See Lopez v. United States, 373 U.S. 427, 439 (1963). Jones implicitly agrees with this by his procrustean attempt to fit the facts of this case into the bed of Gouled. Hoffa and Lewis are, in fact, the most relevant cases for determining that the Fourth Amendment does not protect one from the consequences of his voluntary utterances to a person who secretly is cooperating with the Government.

In Hoffa, the defendant confided his plans to one Partin who had been invited into Hoffa's hotel room whom Hoffa believed was his friend. In fact, Partin was telling the Government what Hoffa had told him about Hoffa's jury tampering scheme. The Supreme Court held that Partin's presence in Hoffa's hotel room did not violate Hoffa's Fourth Amendment rights, since that amendment does not protect "a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it." 385 U.S. at 302. Moreover, the Supreme Court held that the fact that Hoffa made incriminating statements to the Government through Partin was not violative of Hoffa's Fifth Amendment rights since the statements were made voluntarily, 385 U.S. at 304. The fact that Hoffa like Jones was unaware that his listener was cooperating with the Government did turn his voluntary statement into one coerced by the Government.

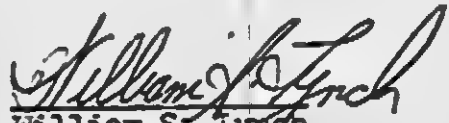
As in Jones' argument on the effect of Desist on this appeal, appellee asks this Court to disregard two recent Supreme Court cases, Hoffa and [by implication] Lewis in order that he may prevail. In order to affirm the order of the Court below, it is necessary for this Court to do precisely that, for Desist, Hoffa and Lewis cannot be distinguished or avoided in any other fashion. The Government submits that the Court below was in error in finding that the Government's conduct violated Jones' Fourth Amendment rights.



The United States respectfully requests this Court to reverse the decision of the Court below and vacate that Court's order of suppression.

Respectfully submitted

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APPENDIX A

Crem

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

KAUFER v. UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 1041. Decided April 1, 1969.

PER CURIAM.

The petition for a writ of certiorari is granted and  
the judgment is affirmed. *Desist v. United States*, 304  
U. S. —, decided March 24, 1969.

MR. JUSTICE DOUGLAS and MR. JUSTICE FORTAS dissent  
from the affirmance of the judgment.

MR. JUSTICE HARLAN and MR. JUSTICE WHITE would  
deny the petition for a writ of certiorari.

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,529

---

UNITED STATES OF AMERICA,  
*Appellant.*

v.

CLIFFORD A. JONES,  
*Appellee.*

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals

for the District of Columbia Circuit

BRIEF FOR APPELLEE

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FILED FEB 10 1969

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(i)

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There is presently pending before this Court a petition for mandamus in this action entitled Clifford Jones, Petitioner v. Honorable Gerhard A. Gesell, Respondent, No. 22, 152 (1968). The case has previously been before the Court on a petition for mandamus entitled Clifford Jones, Petitioner v. Honorable Oliver Gasch, Respondent, No. 20, 951.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 22,529

UNITED STATES OF AMERICA, *Appellant*,

v.

CLIFFORD A. JONES, *Appellee*.

---

Appeal from the United States District Court  
for the District of Columbia

---

BRIEF FOR APPELLEE

---

ISSUE PRESENTED

I. Whether Wayne Bromley voluntarily consented to have the Government monitor his conversations with defendant Clifford Jones.

II. Whether the Government violated defendant Clifford Jones' Fourth Amendment right to be free from unreasonable governmental search and seizure because it did not obtain a warrant authorizing its monitoring of his conversations.

III. Whether the suppression of evidence manufactured by the Government is a proper and appropriate exercise of the Court's supervisory powers over the administration of criminal justice.

STATEMENT OF THE CASE

This appeal by the Government involves admitted eavesdropping on conversations of defendant Clifford Jones, through telephone interceptions and radio-microphone surveillance, in three distinct factual settings, as follows:

(a) A telephone conversation between Wayne Bromley (in Washington, D.C.) and Clifford Jones (in Las Vegas, Nevada) on March 23, 1965.

(b) A series of seven telephone calls and attempted telephone calls to Robert G. Baker (in Los Angeles, California) and Clifford Jones (in Las Vegas, Nevada) from Wayne L. Bromley (in Washington, D.C.) on March 24 and 25, 1965.

(c) A conversation between Wayne L. Bromley, Robert G. Baker, and Clifford Jones at the Beverly-Wilshire Hotel, Los Angeles, California, on March 26, 1965.

A hearing to determine whether the evidence obtained by these interceptions and surveillances should be suppressed was held before District Judge Gerhard A. Gesell, who heard the testimony and observed the demeanor of seven witnesses, six presented by the Government plus the defendant.

Although the events that were the subject of the hearing were relatively simple, on several significant matters, the testimony of one or more of the government witnesses varied considerably from that of others and on at least one critical point, there was a direct conflict in the testimony of the Government witnesses.<sup>1</sup> There was also extensive hearsay testimony, particularly by Donald Moore, a Justice Department attorney at the time of the relevant events, who acknowledged that he was often testifying to what he had been told by others about events from which he was three or four times removed.

Immediately following the evidentiary hearing, oral argument was heard on the motion. The court then ordered that simultaneous briefs and reply briefs be filed by the parties. Daily copy of the transcript of the hearing had been available to the parties and

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<sup>1</sup> Donald Moore, the Government attorney, testified that it was Mark Sandground, Bromley's attorney, who suggested that the Government monitor Bromley's phone calls. (Tr. 24-26). Sandground testified that the suggestion originated with Moore. (Tr. 468-469). (The citation "Tr." refers to the transcript of the hearing on defendant's motion to suppress and "Op." refers to Judge Gesell's Memorandum Opinion of September 30, 1968.)

the court, and in the briefs, the parties argued the facts as well as the legal questions involved. The District Court then entered a Memorandum Opinion in which he made findings of fact, discussed the governing legal authorities, and concluded that the challenged evidence must be suppressed. It is from the resultant order suppressing the evidence that the Government has appealed.

In its "Statement of the Case," the Government, although acknowledging that the District Court made findings of fact, ignores those findings and reasserts its own version of the facts in language virtually identical to its argument on the facts in its brief below. However, in its "Questions Presented", the Government does not raise any issue attacking the District Court's findings of fact, and in its brief, it does not argue that any of the court's findings are not supported by substantial evidence or are clearly erroneous.<sup>2</sup>

Questions of fact are for the District Court in the first instance. The Court here has found the facts and in doing so has resolved numerous conflicts and discrepancies in the testimony, and the Government has not adequately raised any issue as to those findings in its appeal. Accordingly, the defendant will not undertake an entire restatement of the facts in a light favorable to himself, as the Government has done, but will rely on the facts as found by the District Court. However, lest this Court in considering the questions of law presented be misled by the Government's distortion of the facts, the defendant will point out some of the more glaring instances where the Government's grossly self-serving "Statement of the Case" is contrary to the District Court's findings of fact and the record evidence.

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<sup>2</sup>Even in its argument that Bromley did consent to the monitoring of his phone calls and conversations, a question of fact, the Government purports to accept the District Court's findings, i.e., "It is the government's position that Bromley's consent was clearly voluntary *on the basis of the facts found by the district court.*" (Emphasis added.) (Brief for Appellant at 21.) The government then proceeds to argue not on the basis of the facts found by the District Court but on its own version of the facts.

In the very first paragraph of its "Statement of the Case", the Government sets the tone for what is to follow with this flat statement:

"Had suppression not been ordered by the court below, evidence of these conversations would have constituted a substantial proof of the crime charged."

However, in its opinion, the District Court, in discussing another matter, comments on the probative value of this evidence as follows:

"... the case against Jones insofar as it rests on the interceptions is based on inference and innuendo. The intercepted statements of Jones are not flatly incriminating and their significance depends largely on other circumstances, the tone used and the complete version and context in which his statements were made."<sup>3</sup>

The Government refers to the District Court's findings as a "summary of the facts",<sup>4</sup> as if to suggest that it is merely filling in details which were inadvertently omitted. In reality, however, the Government is changing the facts as found by the Court, sometimes subtly and sometimes blatantly. Thus on page 3 of its statement, the Government attempts to convey the impression that discussions between Sandground and the Government attorneys were instigated by Sandground. However, the Court found only that "Bittman and Moore, in a series of meetings with Sandground, thereafter discussed possible charges against Bromley."<sup>5</sup> Interestingly, on this point, Moore testified that the discussions were initiated by himself and Bittman<sup>6</sup> while Sandground testified they were initiated by him.<sup>7</sup>

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<sup>3</sup>Op. at 20.

<sup>4</sup>Brief for Appellant at 2.

<sup>5</sup>Op. at 2.

<sup>6</sup>Tr. 14.

<sup>7</sup>Tr. 447-449.

It would appear the court agreed with the opinion stated by Moore, that in view of the subpoena served on Bromley, "I think Mr. Sandground was as interested in talking to us as we were in talking to him . . ." <sup>8</sup> If the Government wishes to go beyond the findings of the Court it might mention that Sandground's purpose in attending these conferences with the Government attorneys was, as stated succinctly by him, "to keep Mr. Bromley out of jail." <sup>9</sup>

The Government attempts to weaken the impact of the evidence it used to break down Bromley by stating that it was doubtful whether the lie which Bromley told in his first appearance before the grand jury was sufficiently material to the grand jury investigation to support a perjury prosecution of Bromley. <sup>10</sup> However, the court made no such finding, perhaps because it is manifest in the record that no such doubts were ever conveyed to Bromley or Sandground. And Sandground did not advise Bromley of the "possibility" of an indictment as the Government states <sup>11</sup> but that he was a "likely" candidate for indictment, as the court found. <sup>12</sup>

The Government has repeatedly claimed, as justification for its monitoring activities in this case, that immediately after testifying before the grand jury, Jones "sought out" one Dee Kaufman, Fred Black's secretary, and told her to tell Bromley about his grand jury testimony. Presumably, the Government considered this "seeking out" of Mrs. Kaufman as evidence that Jones had lied and then sought to notify Bromley of what he had said. <sup>13</sup> However, it appears the Government has now abandoned its claim that Jones "sought out" Dee Kaufman to give her this message. In its statement of the facts it says only that "immediately after he finished

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<sup>8</sup>Tr. 15.

<sup>9</sup>Tr. 448.

<sup>10</sup>Brief for Appellant at 4.

<sup>11</sup>Brief for Appellant at 5.

<sup>12</sup>Op. at 2.

<sup>13</sup>Brief for Appellant at 28.

testifying. Jones went to the office hotel suite of his friend Fred Black and spoke to Black's secretary Dee Kaufman, whom Jones knew to be a friend of Wayne Bromley." (Emphasis added.)<sup>14</sup> Apparently, the Government simply cannot bring itself to say what the record shows and what the court found:

"Immediately following his Grand Jury appearance, Jones returned to his friend Fred Black's office hotel suite at the Sheraton-Carlton, where he stayed regularly when in town. He recounted to Black's secretary Dee Kaufman, a friend of Bromley, what had occurred before the grand jury. Jones asked her to advise Bromley what he had said about Bromley during his testimony. Jones indicated he did this because he thought Bromley should know that the grand jury was investigating transactions in which Bromley was involved." (Emphasis added.)<sup>15</sup>

It should perhaps be noted, parenthetically, that Bromley's name was not one of those listed on Jones' subpoena as persons other than Baker in whom the grand jury was interested. In a footnote omitted from the just-quoted passage, the Court points out that "The Federal Rules of Criminal Procedure do not prohibit or prevent a witness from disclosing the nature, content and extent of his testimony before a grand jury. See Rule 6."<sup>16</sup> Furthermore, the transcript of Jones' testimony before the grand jury reveals that no suggestion or request was made that he keep the proceedings confidential.

Jones' testimony was as follows: he came to Washington on March 16, 1965, to appear before the grand jury. He stayed at the Sheraton-Carlton in the suite of Fred Black where he customarily stayed when he was in town. Black was an old college friend and Jones had a key to the suite, which served Black as an office as

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<sup>14</sup>Brief for Appellant at 6.

<sup>15</sup>Op. at 4.

<sup>16</sup>Op. at 4.



well as providing living space. The following day (March 17, 1965), Jones appeared before the grand jury and testified. After testifying he returned to the suite to gather his things for the return trip to Las Vegas. Mrs. Kaufman, Black's secretary, was in the suite when Jones left for the grand jury and when he returned. Jones told her of what had occurred before the grand jury and, knowing she was a friend of Bromley, asked her to tell Bromley so he would know the grand jury was investigating transactions in which he was involved.<sup>17</sup>

The Government did not offer any evidence to dispute Jones' testimony as to these events. Indeed, the record indicates that it was not until the hearing on this motion that Moore learned that Jones had stayed at the Black suite when he appeared before the grand jury.<sup>18</sup>

The Government acknowledges that when Mrs. Kaufman told Bromley about Jones' testimony, "Bromley expressed disappointment that Jones had not contacted him directly."<sup>19</sup> However, the Government omits the fact, found by the Court, that later when Mrs. Kaufman spoke to Jones "... she said that Bromley was hurt that Jones had not called him personally to discuss his testimony. This prompted Jones, who lived in Las Vegas, to telephone Bromley in Washington on the evening of March 22."<sup>20</sup>

With respect to this first call from Jones to Bromley, the Government fails to acknowledge two crucial aspects of the hearing testimony and the Court's findings. The first is Bromley's inability

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<sup>17</sup>Tr. 492-494.

<sup>18</sup>Tr. 148.

<sup>19</sup>This expression of disappointment is interesting in view of the fact, as stated by the Government two sentences later, that "Bittman had previously warned Sandground [i.e., Bromley] to be wary of any approaches which might be made to Bromley concerning the Baker Grand Jury inquiry." Brief for Appellant at 6.

<sup>20</sup>Op. at 4.



to adequately account for the fact that he did not voice any disagreement with Jones' recollection of the events that had transpired between them some two years before. The second is the fact, testified to by both Jones and Bromley and found by the Court, that *at the end of the call there was no expectation that either party would call back.*<sup>21</sup>

Both Bromley and Jones had testified before the grand jury (although only Bromley knew this) and each had given a different version of the same transaction. Yet when Jones told Bromley what his recollection of the events had been, Bromley did not voice any disagreement or indicate this was not likewise his recollection. When pressed by the Court as to why he did not react to a statement he allegedly did not agree with, particularly where, as the Court pointed out, if it were true, his tax return was fraudulent, Bromley first replied, "that is the reason I called him back, your honor, was because I had not reacted on the first occasion."<sup>22</sup> This, of course, was unresponsive and also totally inconsistent with Bromley's other testimony that he had no intention of calling Jones back after the first call.<sup>23</sup> When the Court again asked why he did not object, Bromley first replied, "I just don't recall, your honor," and then came up with the lame explanation, "I was under the impression we both knew it was incorrect."<sup>24</sup>

Contrary to the theory which the government attorneys, with the help of Bromley, talked themselves into believing and acting upon, i.e., that Jones was endeavoring to induce Bromley to testify falsely, the evidence established and the Court found that Jones merely called Bromley and told him what his testimony had been. There the matter ended. Both parties hung up and neither expected the other to call back. That is where the situation rested when the Government attorneys re-entered the picture.

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<sup>21</sup>Op. at 4.

<sup>22</sup>Tr. 350.

<sup>23</sup>Tr. 345, 348.

<sup>24</sup>Tr. 351.

The Government states that: "During the numerous conferences which Bromley and Sandground held with the government previous to Bromley's grand jury testimony, Sandground had suggested that the government monitor Bromley's telephone calls."<sup>25</sup> However, Sandground testified that it was Moore of the Justice Department who suggested the monitoring of Bromley's calls,<sup>26</sup> and the court at page 5 of its opinion (cited by the Government for the above statement) merely found that "there had been prior conversations concerning monitoring between Sandground and the Government attorneys but this was the first time the Government attorneys decided to follow this dangerous course."

Bromley received Jones' call about 9:00 P.M. Washington time.<sup>27</sup> The Government relates that Bromley called Sandground and informed him of the call from Jones, that Sandground called Bittman and informed him, and that Bittman called Moore and informed him. The Government omits the court's finding that: "After Sandground reported the incident to Bittman and Moore, the latter checked with his immediate superior and then *suggested Bromley make a return call to Jones which the Government would monitor.*" (Emphasis added.)<sup>28</sup> However, what the Government does not provide and what the Court pressed for at the hearing, is "an explanation of the reason for the immediate reaction to Jones' call both by Bromley and the prosecutors." As the Court states: "None was obtained."<sup>29</sup>

The Government has been unable to come up with any adequate explanation of why its attorneys undertook this midnight monitoring, much less anything approaching good cause for such activity. Speculation by Bromley that Jones might have taped the

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<sup>25</sup>Brief for Appellant at 6-7.

<sup>26</sup>Tr. 468-469.

<sup>27</sup>Tr. 300.

<sup>28</sup>Op. at 5.

<sup>29</sup>Op. at 5.

first phone call was mentioned, but no basis for such speculation was ever given.<sup>30</sup>

At one point the "Kaufman message" was half-heartedly offered as an excuse by the Government, i.e., it made the phone call a "repeated approach" by Jones to Bromley, but this theory has apparently been abandoned in view of the fact, testified to by FBI agent Brown,<sup>31</sup> that the government never even got around to interviewing Mrs. Kaufman to find out what her message was until three months after the monitoring had occurred.

Moore testified that he was told Bromley was "upset" by the call from Jones, but there was no explanation as to why Bromley was allegedly upset and none was apparent since Bromley had already testified and presumably put his version of the transaction on the record.<sup>32</sup> Moore testified that at some point he was told Bromley feared physical violence at the hands of Jones, but even Moore felt such fears were unrealistic,<sup>33</sup> and Bromley himself denied that he ever feared physical harm from Jones.<sup>34</sup> In short, every effort by the Government to find some objective justification for this monitoring fell of its own weight at the hearing, and was rejected by the Court.

The explanation for this monitoring is painfully obvious, and the District Court points it out in its statement of the facts.<sup>35</sup> Bromley and Jones had both testified before the grand jury about the same events and their accounts differed. The Government attorneys assertedly "believed Bromley absolutely" and they were building their case on that belief. Accordingly, they concluded that

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<sup>30</sup>It was later brought out that Jones had not taped the call. Tr. 496-497.

<sup>31</sup>Tr. 271-272.

<sup>32</sup>Tr. 30-31.

<sup>33</sup>Tr. 31-32.

<sup>34</sup>Tr. 335.

<sup>35</sup>Op. at 5-6.

Jones must have committed perjury in his testimony and they set up the return call by Bromley and monitored that call to get evidence that Jones had perjured himself.

The Government states<sup>36</sup> that in the monitored return call, Bromley merely did not indicate to Jones that he *had* appeared before the Grand Jury, but that does not do justice to the Court's findings or the record. The transcript of the call shows that Bromley lied in stating to Jones that he *had not* appeared before the Grand Jury, and he repeatedly invited Jones to tell him what to say when he did appear.<sup>37</sup> Furthermore, the evidence showed and the Court found that Bromley lied *at the instruction of Government counsel*.<sup>38</sup>

The Government states<sup>39</sup> that the transcript of the conversation demonstrates that Moore's fear of an obstruction of justice or attempt to suborn perjury by Jones was not without foundation. However, in support of this statement it cites "Gov. Exhibits 2, 4, and 5" which are the transcript of this call *and* the notes of the later eavesdropping on the meeting in Los Angeles.<sup>40</sup> This is a tacit admission of what is obvious from a reading of the transcript of the return call—it does not contain any evidence of any crime at all on the part of Jones.

The Government refers to the second call from Jones, which occurred the evening following the monitored call by Bromley, but does not acknowledge the basis in the transcript of the monitored call for this second call, noted by the Court.<sup>41</sup> After Bromley told

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<sup>36</sup>Brief for Appellant at 8.

<sup>37</sup>Op. at 6-7.

<sup>38</sup>Op. at 6.

<sup>39</sup>Brief for Appellant at 9.

<sup>40</sup>Apparently the Government is of the view that the fruits of a search can be used to justify the search.

<sup>41</sup>Op. at 7.

Jones of his problems with his income tax returns, the transcript shows the following exchange:

"Mr. Jones: I'll tell you what I had better do. Since your record is not completed, you don't remember, I had better get you some copies back there.

Mr. Bromley: Yes, send me some copies, because I have never had any of them."<sup>42</sup>

Jones testified that he called Bromley the following evening about the IRC form 1099's showing the payments to Bromley, the forms to which he had made reference in the monitored call.<sup>43</sup>

As the court points out<sup>44</sup> Bromley claims that in this call, Jones wanted him to set up a meeting between Bromley, Baker and Jones to discuss Bromley's testimony, while Jones denies this and claims it was entirely Bromley's idea.<sup>45</sup> However, what is not disputed is that it was Bromley who went to a considerable effort, i.e., seven phone calls under Government auspices over a period of two days, to set up the meeting and make the necessary arrangements among the three. As the Court found, "This was again at the Government's suggestion and with its active encouragement."<sup>46</sup>

What the Government refers to as "two written transcripts of this [the Los Angeles] conversation"<sup>47</sup> are incomplete and fragmented notes of what was heard at two or three different receivers, no one of which picked up the entire conversation (if indeed the entire conversation was ever transmitted, for as the Court points out, Bromley was able to and did turn the transmitter off and on).<sup>48</sup>

<sup>42</sup>Gov't Ex. 2, p. 7.

<sup>43</sup>Tr. 497-498.

<sup>44</sup>Op. at 7-8.

<sup>45</sup>Note that Bromley suggested such a meeting in the monitored call. Op. 7; Ex. 2, p. 12.

<sup>46</sup>Op. at 8.

<sup>47</sup>Brief for Appellant at 10.

<sup>48</sup>Op. at 8, 9 and 10.

The Government has not seen fit to attack directly the District Court's findings of fact, quite obviously because those findings have overwhelming support in the testimony that was given before the Court, mostly by the Government's own witnesses. Instead the Government has undertaken in its "Statement of the Case" to distort the lower court's findings to suit its purposes on appeal.

## ARGUMENT

### I.

#### WAYNE BROMLEY DID NOT VOLUNTARILY CONSENT TO THE GOVERNMENT'S MONITORING OF HIS CONVERSATIONS WITH DEFENDANT CLIFFORD JONES

Facts found by the District Court, which heard conflicting testimony as to the admissibility of evidence and observed the demeanor of witnesses, may not be disturbed unless clearly erroneous.<sup>49</sup> The clearly erroneous rule applies to the District Court's finding that Bromley did not voluntarily consent to the Government's monitoring of his conversations, because the voluntariness of consent is a fact question. Thus, for example, on a motion to suppress evidence where the voluntariness of the defendant's consent to a search is at issue, it has uniformly been held that the question is to be determined by the District Court in the first instance as a matter of fact.<sup>50</sup> Here the question is whether Bromley consented to the Government's monitoring of his conversations with Jones rather than whether Jones consented to a search of his (Jones') premises. But the factors, *i.e.*, those set forth in *Judd*, going to whether or

<sup>49</sup>*Jackson v. United States*, 122 U.S. App. D.C. 327, 353 F.2d 862 (1965); *United States v. Page*, 302 F.2d 81 (9th Cir. 1962) (en banc); see *Campbell v. United States*, 373 U.S. 487 (1963).

<sup>50</sup>*United States v. Vickers*, 387 F.2d 703 (4th Cir. 1967); *United States v. Cachoian*, 364 F.2d 291 (2d Cir. 1965); *Burke v. United States*, 328 F.2d 399 (1st Cir. 1964); *United States v. Page*, 302 F.2d 81 (9th Cir. 1962) (en banc); see also *Judd v. United States*, 89 U.S. App. D.C. 64, 190 F.2d 649 (1951).



not there was consent by Bromley, are the same,<sup>51</sup> and the question remains one of fact for the District Court.

As demonstrated in the foregoing statement of the case, the facts found by the District Court are supported by the evidence of record and the Government has not claimed that any of the findings are clearly erroneous. Accordingly, the finding that Bromley's consent was involuntary should not be disturbed.

By the Government's own concession, both here<sup>52</sup> and in the court below,<sup>53</sup> the legality of its entire program of monitoring Jones' conversations—both the telephone calls and the Bromley-Jones-Baker, in-person conversation at the Beverly Wilshire Hotel—stands or falls on the nature of Bromley's participation in the affair; that is, if Bromley's consent to the several monitorings was involuntarily given, then the whole of the Government's activity was illegal.<sup>54</sup> To succeed with its argument that Bromley voluntarily consented to the monitoring, the Government resorts to a critically distorted reading of the record, which reading it accomplishes by selectively omitting significant facts which are damaging to its position and by compounding half-truths. These purposeful lapses are noted with particularity in the discussion that follows.

<sup>51</sup>*United States v. Zarkin*, 250 F. Supp. 728 (D.D.C. 1966).

<sup>52</sup>Brief for Appellant at 20.

<sup>53</sup>Government's Post-Hearing Response 1: Opposition To Defendant's Motion To Suppress, *United States v. Jones*, Crim. No. 40-66 (D.D.C., Sept. 30, 1968) at 11, *appeal docketed*, No. 22529 (D.C. Cir., Nov. 29, 1968).

<sup>54</sup>This formulation of the problem assumes, obviously, that a determination of whether Bromley consented (voluntarily or otherwise) to the monitoring is of controlling relevance to the disposition of the motion to suppress evidence of the monitored conversations. Jones disputes this and contends that the question of Bromley's consent (whether voluntary or not) is wholly irrelevant to the determination of whether his (Jones') Fourth Amendment right to be free from unlawful search and seizure has been violated. (See the next succeeding section of this brief.) Should this Court determine, however, that the nature of Bromley's consent is relevant, then the record herein provides a sound foundation upon which this Court should find, as did the District Court, that Bromley's

The central theme in the Government's argument in support of the proposition that Bromley voluntarily consented to governmental surveillance of his conversations with Jones is that Bromley's attorney, Mark Sandground, counseled him to acquiesce in the Government's suggestions that he participate in the planned surveillance. This advice, it is said, effectively insulated Bromley's volition from the influence of the Government. Interestingly, the Government sought in fact to void the so-called "insulation" without success: It would have preferred that Sandground *not* be present either at Bromley's home on the night of March 22-23, 1965, or during Bromley's trip to Los Angeles—the occasions for two of the three instances of governmental "bugging" involved in this case. Only because Sandground insisted, in the interest of protecting his client, did the Government tolerate his presence on either occasion.<sup>55</sup> Furthermore, nothing the Government can point to in the record dilutes or disturbs the District Court's finding that Sandground's recommendations to Bromley were anything other than "the advice of necessity which adds nothing to the involuntary nature of Bromley's capitulation."

To give this aspect of the government's argument perspective, it is noteworthy that both the District Court<sup>56</sup> and the Government,<sup>57</sup> respectively, have characterized Sandground's advice to Bromley as being "wise, experienced" and "experienced." Additionally, Sandground must be credited with his experience gained from working at the Department of Justice when evaluating his appraisal of Bromley's standing vis-a-vis that agency and the accuracy and certain weight of his advice to Bromley based upon that experience. In short, and upon the record, the District Court found, to use a colloquial expression, that the Government had Bromley "between consent was involuntarily given, and hence, that even by its own standards, the Government's surveillance of the conversations in question was unlawful.

<sup>55</sup>Tr. 68, 469-470.

<sup>56</sup>*United States v. Jones*, Crim. No. 40-66 (D.D.C., Sept. 30, 1968) at 14, *appeal docketed*, No. 22529 (D.C. Cir., Nov. 29, 1968).

<sup>57</sup>Brief for Appellant at 3, 23.



a rock and a hard place" and nothing that Sandground said or *could* have said, would have altered the fact that Bromley had no alternative to complete cooperation with the government—except the prospect of certain indictment in the event he refused to cooperate. Such a "choice", in any meaningful sense, is no choice at all.

There is no dispute that the Government was the author of Bromley's dilemma—cooperate or be indicted! And although the government purports to base its argument on consent on the facts as found by the District Court, it strays widely both from that Court's findings and from the facts of record. At the outset, the Government is at pains to induce an ambience wherein it can portray Bromley (through Sandground) as approaching the Government and importuning it for the opportunity to let it overhear surreptitiously his conversations with his friends Jones and Baker. Thus, the Government says that it was Sandground who initiated contact with the Government and who first explored with the Government what the grand jury wanted from Bromley.<sup>58</sup> In fact, Sandground's initial call to the government was for the utterly innocuous purpose of having Bromley's appearance before the grand jury postponed so that he (Sandground) would have time to prepare for it. As to who sought out whom for a discussion of Bromley's difficulties, Moore testified that it was either he or Bittman who suggested that Sandground come to the Department of Justice for a conference on the subject.<sup>59</sup> On the other hand, Sandground indicated that a discussion had been his idea.<sup>60</sup> The District Court found simply that that meeting and others had occurred.<sup>61</sup>

By some curious and inept logic, the Government sees its refusal to grant Bromley immunity in return for his cooperation as

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<sup>58</sup>Brief for Appellant at 21.

<sup>59</sup>Tr. 14-15.

<sup>60</sup>Tr. 447.

<sup>61</sup>*United States v. Jones*, Crim. No. 40-66 (D.D.C., Sept. 30, 1968) at 5, *appeal docketed*, No. 22529 (D.C. Cir., Nov. 29, 1968).

strong evidence of its lack of control over him. Rightly viewed, its refusal is a cogent indication of the presence rather than the absence of the pressure it brought to bear on Bromley. For what better way can be imagined to create and sustain in Bromley a fear of indictment than to withhold immunity. And what better way can be imagined to persuade Bromley to do the Government's bidding than to keep him ever mindful of the alternative to cooperation—indictment. With immunity conferred (and with it, the loss of the threat of indictment), the Government quite plainly, would have lost a significant measure of its hold over Bromley.<sup>62</sup> And there is a further compelling reason why the Government declined immunity for Bromley and it is hardly surprising: The government did not trust Bromley, already a self-confessed perjurer. Nor was there any assurance or reason to believe that Bromley had, or could obtain, any evidence that would be worth the prize of immunity. Indeed, both before and after the monitored conversations, the Government knew nothing more, even with Bromley's abject complicity in its program of snooping, than that Bromley (a self-confessed perjurer, as we have noted) was telling them a different version of certain events than was Jones.

During Sandground's initial conference with Moore and Bittman, which had been prefaced by his request that they be as candid as possible, Bittman produced an indexed notebook and for two hours regaled Sandground with the names of persons and transactions with which the government considered that Bromley was questionably involved. As a result of this meeting and those that ensued, Sandground concluded absolutely, from his experience, that Bromley was a likely candidate for an indictment.<sup>63</sup> The Govern-

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<sup>62</sup>Significantly, during the entire period relevant herein (including the occasions when the Government used Bromley to eavesdrop on Jones), the Government kept Bromley under subpoena. He was not released from the subpoena upon completion of his testimony before the grand jury.

<sup>63</sup>Sandground was surprised, in fact, that Bromley was not ultimately indicted, even considering that he (Bromley) had cooperated thoroughly in the Government's surveillance activities.

ment seizes upon the fact that it told Sandground that it did not need Bromley's help in building a tax case against Baker,<sup>64</sup> putatively to demonstrate that it had no incentive to pressure Bromley for his cooperation. But the Government does not tell this Court that it considered Bromley's testimony to be "crucial" and "vital"<sup>65</sup> in other areas of concern to it, which also involved Baker. In any event, the result was the same: Sandground came away from his meeting with Moore and Bittman with the distinct understanding that Bromley's *only* hope of saving himself from indictment, conviction and jail was to cooperate fully with the government. Sandground relayed to Bromley the utter seriousness of the latter's position and further explained to him the meaning of the Government's "appreciation" for his help. Bromley helped. *Bromley was not indicted.*

Of course, once Bromley had testified before the grand jury, and once Jones had given the same grand jury a conflicting version of the same events, Bromley had a heightened incentive to do whatever the Government asked of him: He needed to re-establish his credibility and reliability. He had to convince Bittman and Moore that he could be valuable to them as a witness for the prosecution. Thus, when he was approached about permitting surveillance of conversations he was to have with Jones and Baker—conversations initiated at the suggestion of the Government—an option to decline the overture for cooperation was simply non-existent.

The statements by the government that—

"The suggestion that the Government monitor Bromley's conversations with Baker and others was initiated by Sandground, not the Government. Twice, Sandground suggested that it would be in Bromley's best interests if the Government monitored

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<sup>64</sup>Brief for Appellant at 21-22.

<sup>65</sup>Tr. 453.

his client, and thus protect Bromley from being set up as a perjurer by Baker and Jones."<sup>66</sup>

is a flat, inexcusable distortion of the record. Sandground categorically denied that he suggested *any* of the monitorings undertaken by the prosecutors.<sup>67</sup> The most that the District Court could find, given Moore's testimony that Sandground had suggested surveillance, was that surveillance had been discussed between the Government and Sandground.<sup>68</sup>

Skirting facts disagreeable to it and relying on half-truths, the government tells this Court that:

"When on the evening of March 22, 1965, the government attorneys finally did suggest to Sandground that Bromley's return call to Jones should be monitored by the court reporter, Bromley's consent was obtained only after Sandground and Bromley discussed the matter by themselves in Bromley's bedroom. Bromley authorized the monitoring only after being advised to do so by his personal counsel. Similarly, the government recorded Bromley's phone calls on March 24, and 25, 1965, and the Los Angeles meeting on March 26, 1965, only after securing Bromley's authorization through Sandground. Bromley never authorized the government monitoring before consulting with Sandground as to its advisability."<sup>69</sup>

But what is it that the Government fails in its argument to tell the Court? It does not tell the Court that the idea for Bromley to return Jones' call originated with the Government. It does not tell the Court that either Moore or Bittman suggested to Bromley that

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<sup>66</sup>Brief for Appellant at 22.

<sup>67</sup>Tr. 468, 476, 478-479.

<sup>68</sup>*United States v. Jones*, Crim. No. 40-66 (D.D.C., Sept. 30, 1968) at 5, *appeal docketed*, No. 22529 (D.C. Cir., Nov. 29, 1968).

<sup>69</sup>Brief for Appellant at 22.

he lie to Jones about not yet having appeared before the grand jury, in hopes of eliciting some damaging admissions from Jones. (Bromley told the lie). It does not tell the Court that Moore suggested that Bromley initiate further calls to Jones and Baker, to set up a meeting among the three of them, and to have those telephone conversations monitored. (Bromley acquiesced, and he had to attempt seven calls over a two-day period before he succeeded in completing them.) It does not tell the Court that the idea to secrete a transmitting device on Bromley's person and to send him to the West Coast to "bug" an in-person conversation with his friends originated with the Government. In fine, the Government, and not Bromley or Sandground, conceived, promoted and engineered an elaborate plan of eavesdropping. And to argue that Bromley undertook a hurriedly-devised, coast-to-coast trip wired for sound to entrap long-time friends at the behest of the Government, unless he was under some strong compulsion to do so, is to cavil at the contrary teaching of everyday experience. Clearly, Bromley's fear of indictment and his hope of avoiding it compelled him to do these things, which, absent his fear and hope, he would not have done.

Next, and apparently in earnest, the Government *argues* that Bromley's "acquiescence" in its program of eavesdropping was motivated by his self-interest and that "[h]e wanted to substantiate, on the record, his version of his dealings with Jones and Baker, in the face of what certainly appeared to be efforts by Jones to involve him in perjury."<sup>70</sup> Of course Bromley acted out of self-interest!—

<sup>70</sup>Brief for Appellant at 23. The quoted assertion has validity *only if* the Government is permitted its gratuitous assumption that Jones lied before the grand jury and Bromley did not. But, as has been demonstrated elsewhere in this brief and as found by the District Court, the Government did not and could not point to any objective facts which even remotely support its lame contention that Jones was trying to teach Bromley a false version of certain events. As the District Court repeatedly pointed out, such a theory is a logical impossibility inasmuch as Bromley had already testified before the grand jury—both when Jones testified and when Jones called Bromley on the night of March 22, 1965. Furthermore, the District Court was justifiably incredulous that Bromley failed to protest Jones' version of events (in the first, unmonitored call of that night) *if he (Bromley) knew that version to be false.*

assuming, that is, for the sake of argument, that he had some legitimate reason for returning Jones' call on the night of March 22, 1965, which, of course, he did not. But the Government conveniently misses the point: Bromley's self-interest lay not simply in *wanting* to get his version established; rather, he *had* to get it established, both to avoid being found to have perjured himself a second time and to satisfy the Government that he had not submitted false income tax returns wherein certain moneys were not reported as income to him on the theory that he was only a conduit for those moneys to Baker. Once Jones had testified that the money was in fact paid to Bromley (for his own use as far as Jones was concerned), Bromley's only salvation lay in convincing the government's attorneys that Jones was lying. Bromley, therefore, had a substantial *personal* motive for producing "evidence" of a crime by Jones whether or not Jones had in fact actually committed any crime. His sole purpose (and only hope of escaping indictment himself) was to lead Jones into making incriminating statements. Although Bromley was not paid *per se* for his work, the quid pro quo that he did receive was at least of equal value to him. He was not indicted, despite a notebook full of material which showed him (to Sandground's satisfaction) to be involved in some very questionable transactions.

From reading the Government's brief,<sup>71</sup> the scenario for a confrontation between the Government and Bromley which would satisfy its criteria for a finding of involuntary consent, would go, quite literally, like this:

"Mr. Moore or Mr. Bittman: 'Mr. Bromley, if you do not cooperate with us, we will see to it that the grand jury indicts you.'

"Mr. Bromley: 'I really don't want to, but I will.'"

Surely the law is neither so insensitive to the realities of governmental pressure nor so unsophisticated as to require any such

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<sup>71</sup>Brief for Appellant at 23.



exchange before a finding of involuntary consent can and should be made. Bromley's consent was exacted only by reason of his real and well-founded fear of indictment and his hope that cooperation with the Government would avert an indictment or at least insure a lenient sentence if he was indicted and convicted. Consent so given in this jurisdiction is involuntary and can provide no predicate of legality for the Government's program of eavesdropping.<sup>72</sup> The Government cites four cases in support of its argument to the contrary.<sup>73</sup> The Government claims that in the *Baker* case the District Court had practically the same factual situation before it when it denied a motion to suppress eavesdrop evidence and ruled that Bromley's consent was voluntary.<sup>74</sup> The truth of the matter is that at the time Judge Gasch ruled on that motion to suppress, he had before him but a small part of the evidence that was before the District Court in this case and is now before this Court. In the *Baker* case, the sole witness on the motion to suppress was Bromley<sup>75</sup> and the examination by Government counsel (Bittman) was so completely leading that only the facts most favorable to the Government's viewpoint were brought to Judge Gasch's attention.<sup>76</sup> Although Baker's attorneys examined Bromley and objected to the

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<sup>72</sup>*Weiss v. United States*, 308 U.S. 321 (1939); *United States v. Laughlin*, 223 F. Supp. 623 (D.D.C. 1963); *United States v. Laughlin*, 222 F. Supp. 264 (D.D.C. 1963).

<sup>73</sup>*United States v. Baker*, 266 F. Supp. 456 (D.D.C. 1967); *United States v. Zarkin*, 250 F. Supp. 728 (D.D.C. 1966); *McLure v. United States*, 332 F.2d 19 (9th Cir. 1964), *cert. denied*, 380 U.S. 945 (1965); *United States ex rel. Dixon v. Pate*, 330 F.2d 126 (7th Cir.), *cert. denied*, 379 U.S. 891 (1964).

<sup>74</sup>Brief for Appellant at 25.

<sup>75</sup>To the best of counsel's knowledge and belief, Sandground did not testify in the suppression hearing conducted in the *Baker* case. Had he done so, and testified as he did in the instant case, Judge Gasch could not reasonably have found that Sandground's advice to Bromley precluded Bromley's consent from being other than voluntary; that is, that Sandground's advice was anything other than the "advice of necessity".

<sup>76</sup>Record, vol. 1 (of 6th day), Jan. 16, 1967, at 1194-1197, *United States v. Baker*, 266 F. Supp. 456 (D.D.C. 1967).

Government's questions *when it served the interests of Baker*, they made no effort whatsoever to protect the interests of Jones. Had counsel for Jones participated on behalf of Jones in the hearing before Judge Gasch, the factual predicate for that Court's decision would necessarily have been significantly different. Had Jones and Sandground testified during the hearing on the motion to suppress before Judge Gasch, that learned Judge would have realized that the Government-Bromley version of the facts was slanted to the point of being untrue.

Judge Gasch did not explain why he viewed Sandground's advice to Bromley as an intervening circumstance that negated even the possibility that Bromley's consent was other than voluntary.<sup>77</sup> Be that as it may, as has been shown above, Sandground's role, rightly viewed, was not that of a buffer between Bromley and the Government, but was, rather, that of an experienced intermediary whose function, as it turned out, was to bring home to Bromley the seriousness of his position in the eyes of the Government and to give Bromley his (Sandground's) best advice on extricating himself. Bromley's volition was in no way protected from the overtures of the Government by Sandground's counsel. Indeed, by Sandground's own testimony, he intensified Bromley's fear as to what would happen if he did not cooperate. All Sandground did was to place before Bromley the latter's options in concrete terms—*cooperate or be indicted!*

To the extent that *Zarkin* may be construed as favoring a conclusion that Bromley's consent was voluntary, it is an anomaly in the law of this jurisdiction and should be disregarded. But there are controlling distinctions between that case and this. There, one who had pleaded guilty to a crime approached the police and offered to place telephone calls to the defendants and to authorize the police to monitor them. He did this in the hope of receiving a lenient sentence. It was concluded that the consent was voluntary and that evidence seized from the defendants as a result of information

<sup>77</sup>*United States v. Baker*, 266 F. Supp. 456, 459 (D.D.C. 1967).



secured from the monitored calls was admissible. The basis of the Court's conclusion was that it had not been shown that the police pressure upon the informer was so great as to have overcome the voluntary nature of the informer's consent. Several distinctions readily distinguish that case from this. Here Bromley, at the time of his "consent", was convicted of no crime. He hoped and expected to escape prosecution altogether, not merely to obtain a lenient sentence if convicted. In short, Bromley had much more at stake. Furthermore, in this case, the initiative for each monitored telephone call came from Bittman and Moore and was expressly designed to translate Bromley's general apprehension about his future into a real and immediate concern should he refuse to do their bidding. It cannot be doubted, in Bromley's evaluation of the situation, that had he declined any one of the Government's overtures for an opportunity to monitor defendants' conversations, he (Bromley) stood to be indicted and convicted!

The treatment of the question of consent in the *McClure* and *Pate* cases is so abbreviated as to be of no assistance whatsoever. Thus, in *McClure* the court's full treatment of the question of consent is found in one paragraph:

"Authorization to a listening by either party to a call satisfied the statute [§ 605 of the Federal Communications Act], [footnote omitted] but *McClure* maintains that Hopping's consent was coerced and hence was not sufficient authorization. [Footnote omitted.] Hopping had been arrested for a narcotics violation . . . and the agents had promised to ask the United States Attorney that he not be prosecuted if he cooperated. *We see no merit in this contention. We think the consent of Hopping was freely given; but admitting arguendo that the consent was coerced and that there was an unauthorized interception, [footnote omitted] no prejudice resulted by the introduction of the officer's testimony concerning the calls into evidence.* Hopping, a party to the conversations, also testified to the content of the phone

calls, and there is no contention that his testimony was coerced, Hopping's testimony was therefore properly received [footnote omitted], and that of the agents was merely cumulative thereto." (Emphasis added.)<sup>78</sup>

As is plain, the court's analysis of whether consent was, in fact, freely given is confined to its one-line conclusion that it was. Moreover, it is significant that the *narcotics agents* promised only to ask the U.S. Attorney to withhold prosecution if Hopping cooperated. The narcotics agents were without the power *themselves* to withhold prosecution. Here Bittman and Moore, the responsible prosecutors handling the grand jury, made it clear that Bromley's cooperation would be "appreciated"; Sandground knew and manifestly told Bromley what that meant. Moreover, Bittman and Moore were themselves in positions of far greater effectiveness for averting Bromley's indictment than were the narcotics agents for averting Hopping's. The court, in unmistakable dictum, assumed that even if Hopping's consent was coerced, the admission of the narcotics agents' testimony (or here, the tapes and stenographic report of defendant's conversations) was harmless error inasmuch as Hopping also testified. This is the not unfamiliar problem faced by defendants after conviction and on appeal, i.e., that some other evidence aside from that challenged will support conviction. But here defendant is at the threshold of prosecution and he is entitled to have suppressed evidence illegally seized. The mental and emotional pressures upon Bromley to avoid jail (inspired by the Government and relayed by Sandground) vitiate a legally-justifiable conclusion that that his "consent" was voluntary.

The court's discussion of consent in *Pate* is likewise confined to a single paragraph:

"Petitioner earnestly argues that there was no consent by Mrs. Nitti that this telephone conversation be overheard. He emphasizes her position as a

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<sup>78</sup>332 F.2d at 22.

narcotics addict in the custody of the police, and asserts that, under those circumstances, she had no choice in the matter as to whether or not she would make the telephone call; and that, therefore, there was no consent by either party that the conversation be overheard. *Adherence to that theory would require us to assume facts which are not proved, inasmuch as there is no suggestion of record that coercive practices were employed against Mrs. Nitti.* We may assume that the police suggested that the call be made, but that fact standing alone does not negative consent. We will not attach a condition for the disclosure of the content of telephone communications made by a person while in the custody of the police that such person must have volunteered to make the call before it can be found and held that he had consented that his conversation might be overheard by the police." (Emphasis added.)<sup>79</sup>

From the underscored portion of the above quotation, it is manifest that the court's decision turned solely on a simple failure of proof. Such is not the case here, where the Government's inducement to Bromley and its reward for his performance are so plainly drawn.

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<sup>79</sup>330 F.2d at 128.

## II

THE EVIDENCE OF THE JONES-BROMLEY-BAKER  
CONVERSATIONS, OBTAINED BY SURREPTITIOUS  
ELECTRONIC SURVEILLANCE, WAS PROPERLY SUP-  
PRESSED AS HAVING RESULTED FROM AN UNLAW-  
FUL INVASION OF JONES' FOURTH AMENDMENT  
RIGHT TO BE FREE FROM UNREASONABLE GOV-  
ERNMENTAL SEARCH AND SEIZURE

"The time may come when no one can be sure whether his words are being recorded for use at some future time; when everyone will fear that his most secret thoughts are no longer his own but belong to the Government; when the most confidential and intimate conversations are always open to eager, prying ears. When that time comes, privacy, and with it liberty, will be gone. If a man's privacy can be invaded at will, who can say he is free?"<sup>80</sup>

It seems advisable, in view of the Government's purposefully confused analysis of the case, to lay down here some of the indisputable and controlling facts and legal principles with which we are properly concerned. This case involves the Fourth Amendment<sup>81</sup> right of defendant Jones to be free from unreasonable governmental search and seizure.<sup>82</sup> Each of the conversations here in question was initiated at the suggestion of and set up by the Government

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<sup>80</sup>*Osborn v. United States*, 385 U.S. 323, 353-354 (1966) (Douglas, J., dissenting).

<sup>81</sup>The Fourth Amendment provides:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>82</sup>The case neither involves nor (necessarily, therefore) turns upon the decision in *Rathbun v. United States*, 355 U.S. 107 (1957), nor upon any other case construing Section 605 of the Communications Act of 1934 (47 U.S.C. § 605).

especially for the purpose of then monitoring it and the Government engineered each instance of monitoring. (In short, the Government did not monitor conversations which otherwise would have occurred; rather, it inspired and managed the entire operation through Department of Justice attorneys.) Indicative of the Government's disposition to completely and thoroughly manage and control its suggested meeting among Bromley, Jones and Baker is the following excerpt from a memorandum prepared by Austin Mittler, a Department of Justice attorney,<sup>83</sup> relating to a plan of surveillance suggested by Charles Lyles, the supervisor at FBI headquarters in charge of the Baker investigation.<sup>84</sup>

"Lyles [the FBI supervisor] suggested [to Mittler] what he thought might be a superior technique for handling this entire matter. He suggested that Bromley should contact Jones and Baker and inform them that he had just received a telephone call from attorneys of the Department of Justice and that he was being requested to appear before the grand jury next week. Mr. Lyles suggested that Bromley further state he had been told not to keep any appointments nor to discuss the matter prior to his grand jury appearance. Lyles' thinking was that his action by Bromley would prompt Jones and Baker to come to Washington in order to discuss the matter with Bromley prior to his grand jury appearance, and that this would enable the Bureau to control the situation and monitor any meetings that might occur. I [Mittler] indicated to Mr. Lyles that it was my thinking that we were now too far along with our present plans with Bromley and Sandground to reverse our position."<sup>85</sup>

It was decided within the Department of Justice not to act on Lyles' suggestion, because plans to implement its decision to have the Jones-Bromley-Baker meeting take place in Los Angeles had already

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<sup>83</sup>Tr. 262.

<sup>84</sup>Tr. 276.

<sup>85</sup>Gov't Ex. 9 on the motion to suppress at 1.

progressed too far and there was the distinct possibility that the Bureau of Narcotics would be able to supply the necessary equipment for surveillance of the meeting planned for Los Angeles.<sup>86</sup> As the District Court noted, this memorandum was "clearly an entrapment document."<sup>87</sup> Jones was wholly unaware that his conversations were being monitored and he had expected that they were strictly private. Each episode in the government's program of surveillance was conducted without the antecedent authorization of a search warrant. It appears, in fact, that the Government's attorneys did not even seek a warrant. Indeed, it further appears that the thought never occurred to them.

Disposition of this case is controlled by *Katz v. United States*.<sup>88</sup> The Supreme Court there held that the Government violates a citizen's Fourth Amendment rights if, without a warrant, it listens to conversations to which he was a party and which he justifiably expected were private. Each critical requirement of the *Katz* decision is satisfied in the instant case: Jones justifiably expected that his conversations with Bromley were private, both on the telephone from his home and in his suite at the Beverly-Wilshire Hotel,<sup>89</sup> and the Government listened to those conversations without a warrant.

In order to save its monitoring here, the Government argues that *Katz* does not reach and embrace situations in which one party to the conversation consents to its being overheard by the Government. And it argues that Bromley's consent<sup>90</sup> to the surveillance

<sup>86</sup>Gov't Ex. 9 at 2.

<sup>87</sup>Tr. 264-265.

<sup>88</sup>389 U.S. 347 (1967).

<sup>89</sup>*Hoffa v. United States*, 385 U.S. 293 (1966); *Jones v. United States*, 362 U.S. 257 (1960); *United States v. Jeffers*, 342 U.S. 48 (1951); *Baker v. United States*, \_\_\_ U.S. App. D.C. \_\_\_, 401 F.2d 958 (1968).

<sup>90</sup>Although Jones disputes the proposition that consent of one party is relevant to a determination of the constitutionality of the Government's conduct, inasmuch as Bromley's consent is not legally cognizable (that is, it was not voluntary), *Katz* applies because, even assuming the relevance of consent, no party here did in fact consent to the surveillance.



legitimizes its conduct, which was otherwise unlawful under *Katz*. This argument will not bear analysis. *Katz* prohibits the invasion of private conversations by the "uninvited ear" of the Government. Nothing in the *Katz* decision even remotely suggests that its holding is to be qualified in situations where the Government employs an informer for the purpose of insinuating its "uninvited ear" into a private conversation. Quite obviously, *Jones*' right to privacy—which is what the Fourth Amendment protects—is equally violated whether Bromley can be said to have consented to the surveillance or not. Recently, in a well-reasoned decision, the Seventh Circuit specifically rejected the argument now urged upon this Court. It concluded:

"It is our opinion, however, that the surreptitious placing of the Kel set on informer Jackson was for all conceptual purposes the same as the surreptitious wiring of the telephone booth in *Katz*. Each act was part of a 'bugging' technique by which a conversation was transmitted to an 'uninvited ear'—government agents. The crucial fact in each case is that the respective speakers [in this case *Jones*] did not consent to the overhearing of their statements and that the conversations were overheard by third persons uninvited by the speaker."<sup>91</sup>

Apparently, the Government cannot or will not recognize the preposterous and illogical implications of its asserted definition of "consensual" surveillance: "In the instant case, it is Bromley's consent, not *Jones*' which is relevant to the issue of [the] constitutionality of the surveillance."<sup>92</sup> If all the Government means by use of the word "consensual" is that Bromley consented to the surveillance, then it has only an empty, useless, and irrelevant definition. For what are at stake here are *Jones*' Fourth Amendment rights and the Government's argument, at bottom, rests upon the hypothesis that Bromley, by consenting to the surveillance, *could* and did nul-

<sup>91</sup>*United States v. White*, Nos. 16021-16022 (7th Cir., Jan. 7, 1969) (en banc) at 7-8.

<sup>92</sup>Brief for Appellant at 14.

lify or waive Jones' rights. But in what sense that has any meaning at all can it be said that one man can waive another's constitutional rights? Simply answered, it is nonsense.<sup>93</sup> And again, the Seventh Circuit has given a cogent reply:

"To claim, as the Government does, that one party can waive the fourth amendment rights of another is the same thing as saying that *Katz* would have been decided differently if the recipient of the intercepted phone call had consented to the Government's bugging. We are unable to believe that such a meaningless form of consent would have rendered the defendants' overheard statements any more admissible in *Katz*. Since we think no distinction of constitutional significance can be drawn between the third party overhearing presented in *Katz* and the consensual monitoring here, the fact of listener consent is without decisional significance and cannot operate as a waiver of any speaker's fourth amendment rights."<sup>94</sup>

Therefore, unless Jones can somehow be said to have consented to the surveillance, the Government is left without any relevant or meaningful consent at all, and hence, without any conceptual justification for its argument. But under the circumstances, it was necessarily impossible for Jones to have consented because, as the Supreme Court observed, in *Katz*, in stating the obvious: "And, of course, the very nature of electronic surveillance *precludes* its use pursuant to the *suspect's* consent." (Emphasis added.)<sup>95</sup> The Gov-

<sup>93</sup>Cf. *Amos v. United States*, 255 U.S. 313 (1921).

<sup>94</sup>*United States v. White*, Nos. 16021-16022 (7th Cir., Jan. 7, 1969) (en banc) at 8.

<sup>95</sup>389 U.S. at 358. What is more, since a consent to the search by Jones would have constituted the waiver of a basic constitutional right, such consent must have amounted to an intentional relinquishment of that right. *Johnson v. Zerbst*, 304 U.S. 458 (1938). It is elementary, as a matter of pure reason, that a right cannot be intentionally given up without knowledge that it is being surrendered. It cannot be seriously contended that Jones had either the knowledge or



ernment's argument is inherently self-defeating, therefore, because neither Jones nor Bromley consented to the surveillance in any sense which has meaning in the context of the question presented.

Putting aside the hopeless and unanswerable conceptual difficulties which inhere in and destroy the government's argument on consent, we may shortly dispose of its remaining arguments. It relies on *Hoffa v. United States*<sup>96</sup> and *Lewis v. United States*.<sup>97</sup> Neither case, however, involved electronic eavesdropping and is therefore inapposite to a resolution of the problem presented by this case. The only question in *Hoffa* was whether to admit the testimony of an informer concerning his personal overhearing, without the use of either transmitting or recording devices, of conversations of the defendant. No question is presently before this Court, however, as to whether Bromley can testify as to his conversations with Jones. A decision on that question was explicitly deferred by the District Court below. *Lewis* turned upon the narrow finding by the Supreme Court that the defendant had, by his conduct, waived his Fourth Amendment right to the privacy of his home. He was there dealing in marijuana with all who wished to enter and do business with him. The Court held that an undercover agent's testimony concerning the purchase of marijuana from the defendant was admissible, not on the theory that there had been no search and seizure, but upon the ground that defendant's privacy had not been invaded. The Court found that defendant had lost his right to privacy because he had turned his home into a "commercial center." In short, a person willing to sell marijuana to any caller cannot

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intention of surrendering his Fourth Amendment rights. And before a Court will hold a defendant to have waived his protection under the Fourth Amendment, the Government must show that the consent is "unequivocal and specific," "freely and intelligently given," "together with clear and positive" evidence to that effect. *Judd v. United States*, 89 U.S. App. D.C. 64, 190 F.2d 649 (1951). Courts have traditionally indulged every reasonable assumption *against* waiver of fundamental rights.

<sup>96</sup>385 U.S. 293 (1966).

<sup>97</sup>385 U.S. 206 (1966).

reasonably rely upon the privacy of his communications with any strangers who call. Although, in other words, there had been a search, it did not invade any protected privacy. Jones' conduct here does not in the slightest respect resemble the defendant's conduct in *Lewis*. Jones did nothing that was not perfectly consistent with his reasonable expectation of privacy concerning his conversations with Bromley. Because the expectation of privacy was intact and unimpaired by any conduct of Jones, the Government unlawfully invaded that privacy when it monitored his conversations without a warrant.

Neither *Lopez v. United States*<sup>98</sup> nor *On Lee v. United States*<sup>99</sup> is of any aid to the Government. Both cases were decided at a point in time when the Supreme Court's decisions on the applicability of the Fourth Amendment to electronic surveillance were controlled by the teaching of *Olmstead v. United States*<sup>100</sup> and *Goldman v. United States*.<sup>101</sup> Under those decisions, it was held that there could be no violation of the Fourth Amendment without the physical invasion of a constitutionally protected area—or, stated another way: In the absence of a trespass there could be no search at all, unlawful or lawful. A trespass implies, of course, an entry without consent. Both *Lopez*<sup>102</sup> and *On Lee* turned upon the Supreme Court's finding that inasmuch as each defendant had conversed with an informer freely admitted to defendant's premises, there had been no trespass and hence not even the possibility of a

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<sup>98</sup>373 U.S. 427 (1963).

<sup>99</sup>343 U.S. 747 (1952).

<sup>100</sup>277 U.S. 439 (1928)

<sup>101</sup>316 U.S. 129 (1942).

<sup>102</sup>Additionally, the decision in *Lopez* was influenced to a significant degree by the fact that the defendant there knew that the person to whom he was talking was a government agent, although he did not know the agent carried a concealed tape recorder. Similarly to *Lewis*, the Court was saying that a citizen who approaches a federal agent with a bribe offer cannot reasonably rely on the privacy of the offer (the conversation).

search.<sup>103</sup> But in *Katz* the Supreme Court specifically overruled both *Olmstead* and *Goldman* and held that what the Fourth Amendment protects is a citizen's reasonable expectation of privacy and its (the amendment's) violation does not turn on the presence or absence of a trespass, or to use the Court's more felicitous phrase—the Fourth Amendment “protects people, not places.”<sup>104</sup> This holding necessarily entails the further conclusion that the conceptual underpinnings of *Lopez* and *On Lee*<sup>105</sup> are gone, because both held that the existence of a trespass was a necessary antecedent to a finding that a search had occurred. (The Court found, in both these cases, that there had been no trespass, upon the doubtful theory that the bare fact that the defendants had engaged in conversations with the informers was equivalent to an admission of the informers to the premises and that, therefore, the Government was on the premises, in effect, with the consent of the defendants.) Now, however, the presence or absence of a trespass is *irrelevant* to the determination of whether a citizen's Fourth Amendment rights have been violated by the Government. Put another way, the Government can violate a citizen's Fourth Amendment rights even without a trespass of any nature. That amendment is violated when the Government, without a warrant, breaches a citizen's justifiable expectation of privacy, *period*, and the fact that no trespass occurs—as is arguably the

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<sup>103</sup>In effect, what the Court was saying was that by not barring admission to the premises to an unsuspected informer, the defendant had somehow consented to the search. The Court's reasoning on this point was never clearly articulated and was dubious in any event. For the point is that the defendant was induced to speak to the informer exactly because he (the informer) did not appear to be what he was—a government agent. Only the deception made the conversation possible. This Court has recognized, however, that the simple act of admitting a government agent to the premises does *not* carry with it the further authorization for a search. *Williams v. United States*, 108 U.S. App. D.C. 384, 263 F.2d 487 (1958), *cert. denied*, 365 U.S. 836 (1961).

<sup>104</sup>389 U.S. at 351, 353.

<sup>105</sup>In particular, see the common-sense dissent of Mr. Justice Burton in *On Lee* which foretells the position ultimately taken by the Court in *Katz*. 343 U.S. at 765-767.

case when a person speaks freely with an unsuspected informer—is of no constitutional consequence.

Applied to the instant case, *Katz* means that the fact that Jones freely talked to Bromley on the telephone<sup>106</sup> and freely admitted him to the hotel room at the Beverly-Wilshire are irrelevant to a determination of whether his (Jones') Fourth Amendment rights have been violated. This is so because *Katz* holds that the absence of a trespass by the Government, which is the exact equivalent of Jones' freely engaging in conversation with Bromley, is irrelevant to the question of constitutional protection. Rather, the test now is: Did the Government, without a warrant, breach Jones' reasonable expectation that his conversations with Bromley were private? Obviously, it did. And the only answer the Government can conceivably advance in reply to this question is the following statement which it has selected from *Katz*.<sup>107</sup> "What a person knowingly exposes to the public, even in his own home or office is not a subject of Fourth Amendment protection."<sup>108</sup> Once again, the Seventh Circuit has met the Government's argument and destroyed it, along with the Government's embarrassing dissimulation that: "Bromley heard only what Jones intended him to hear, and conducted no secret search for evidence."<sup>109</sup> The Seventh Circuit said:

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<sup>106</sup>See *Doty v. United States*, 3 Cr. L.R. 2220 (10th Cir., June 4, 1968).

<sup>107</sup>Brief for Appellant at 12.

<sup>108</sup>389 U.S. at 351. Significantly, as support for this proposition, the Supreme Court cited the *Lewis* case. As we have seen, however, the decision in the *Lewis* case rests not on the fact that the defendant had talked freely to an unsuspected informer but upon the fact that he had *otherwise* turned his home into a place not entitled Fourth Amendment protection. Here, Jones' *only* relevant acts were his conversations with Bromley; all his other conduct was consistent with continuing expectation that his home and his room at the Beverly-Wilshire were private (and therefore entitled to Fourth Amendment protection).

<sup>109</sup>Brief for Appellant at 13. Indeed, if Bromley was conducting no secret search, why did he not wear the Kel transmitter on his lapel?

"[T]he Government, relying upon the following statement from *Katz*, attempts to distinguish that opinion from the facts before us. 'What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.' *United States v. Katz*, 389 U.S. at 351. To ascertain the applicability of that formulation, we must address ourselves to the questions of whether the Government's activities violated a justifiable expectation of privacy which the defendant held and whether he acted in such a manner as to knowingly expose his statements and thus waive his rights. [Footnote omitted.] A realistic appraisal of the defendant's conduct permits no other conclusion than that he justifiably expected his conversations to be private. [Footnote omitted.] The well-laid plans of the Government agents were made because they recognized that the defendant sought to exclude their uninvited ears. Why else would they have hired informer Jackson, placed upon his person a hidden radio transmitter, and concealed agent Jackson in the informer's kitchen closet to overhear the defendant's conversation? Additionally, the locations chosen for the private conversations indicate that the defendant took reasonable steps to protect against governmental intrusion. In such a situation we can only conclude that the defendant's fourth amendment rights were violated [footnote omitted], that the failure to suppress the evidence of his statement was error, and that their admission at trial constituted ground for reversal. [Footnote omitted.]"<sup>110</sup>

Briefly restated, *Katz* confirmed the constitutional principle that a citizen's verbal utterances, as well as his tangible possessions, are protected by the Fourth Amendment from unreasonable search and seizure by the Government.<sup>111</sup> Further, it enunciated the prin-

<sup>110</sup>*United States v. White*, Nos. 16021-16022 (7th Cir., Jan. 7, 1969) (en banc) at 11-12.

<sup>111</sup>389 U.S. at 353; accord, *Baker v. United States*, \_\_\_ U.S. App. D.C. \_\_\_, 401 F.2d 958 (D.C. Cir. 1968); *United States v. White*, Nos. 16021-16022



ciple that what the Fourth Amendment protects is the justifiably held expectation of the citizenry that its conversations are private and not subject to surveillance by the Government. The *only* exception to this principle is that the Government may overhear conversations, otherwise intended to be private, *if, but only if*, it first obtains a warrant for that purpose.<sup>112</sup> This is to guarantee "that the judgment of a disinterested judicial officer will interpose itself between the police and the citizenry."<sup>113</sup> In this case Jones was entitled to the full protection of the Fourth Amendment as delineated in *Katz*. He was denied that protection, and because he was

(7th Cir., Jan. 7, 1969) (en banc); *Berger v. New York*, 388 U.S. 41 (1967); *Wong Sun v. United States*, 365 U.S. 505 (1961); cf. *Osborn v. United States*, 385 U.S. 323 (1966).

<sup>112</sup>*Osborn v. United States*, 385 U.S. 323 (1966). The government takes issue with the District Court's reading of *Osborn*. (Brief for Appellant at 16). In *Osborn*, as in *Lopez*, the defendant's incriminating conversations were tape recorded (unknown to him) by a government agent to whom he was talking. But prior to the surreptitious recording (transmitting was not involved), the government obtained a warrant. Only because of the existence of the warrant, did the Supreme Court validate the government's conduct. Thus, the Supreme Court effectively held, as recognized by the District Court below, that the consent of one party to the conversation (the government agent) was not of controlling relevance to a determination of the constitutional question.

The government argues, however, that *Osborn* would have been decided the same way even if a warrant had not been obtained. To support this contention, it relies on *Osborn's* treatment of *Lopez*, arguing that the Supreme Court viewed the surveillance in *Osborn* to be authorized by *both* the majority opinion in *Lopez* (no warrant required) *and* by the dissents in *Lopez* (warrant required). But that is not true. In *Osborn*, the Court quite explicitly eschewed any reliance on the majority opinion in *Lopez* for its decision:

"But we need not rest our decision here upon the broad foundation of the Court's opinion in *Lopez*, because it is evident that the circumstances under which the tape recording was obtained in this case fall within the narrower compass of the *Lopez* concurring and dissenting opinions." (Emphasis added.) 385 U.S. at 327.

If, as the government urges, the surveillance was valid under the *Lopez* majority, the Court in *Osborn* would simply have so ruled, because, except for the critical distinction of the warrant in *Osborn*, the two cases are indistinguishable.

<sup>113</sup>*Spinelli v. United States*, No. 8 (U.S. Jan. 27, 1969) at 9.

denied it, the evidence seized in violation of that protection must be suppressed.<sup>114</sup>

By engaging in some rather feckless second-guessing, the Government tries to gather support for its contention that *Katz* is not controlling in situations where one party to a conversation consents to the Government's surreptitiously overhearing it, by noting that the majority opinion in *Katz* does not explicitly disavow Mr. Justice White's observation, in a concurring opinion,<sup>115</sup> that *Hoffa v. United States*,<sup>116</sup> *Lopez v. United States*,<sup>117</sup> *Osborn v. United States*,<sup>118</sup> and *On Lee v. United States*<sup>119</sup> are undisturbed by *Katz*. All that need be said, really, about this is that Mr. Justice White's parenthetical remarks in a concurring opinion are not the decision of the Supreme Court. And by reasoning equal in cogency to that of the Government, it could be said that if the majority agreed with Mr. Justice White, it would have said so. Even a cursory examination, however, of the cases mentioned by Mr. Justice White as having continuing vitality demonstrates why the majority did not feel compelled to deal with them explicitly. Thus, neither *Hoffa*, *Lopez* nor *Osborn* involved eavesdropping; that is, none of these cases involved the contemporaneous overhearing by the Government of a conversation between a defendant and an informer or other third party. *Katz* was an eavesdropping case. *On Lee*, although a "walking bug" case rather than a "telephone" case (as was *Katz*), necessarily fell with *Olmstead* and *Goldman* because it (*On Lee*), like they, turned

<sup>114</sup>*Elkins v. United States*, 364 U.S. 206 (1960); *Nardone v. United States*, 208 U.S. 338 (1939); *Nardone v. United States*, 302 U.S. 379 (1937); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920); *Weeks v. United States*, 232 U.S. 383 (1914).

<sup>115</sup>389 U.S. at 363.

<sup>116</sup>385 U.S. 293 (1966).

<sup>117</sup>373 U.S. 427 (1963).

<sup>118</sup>385 U.S. 323 (1966). Of course *Osborn* was not disturbed by *Katz* because *Osborn* met the warrant requirement specified by *Katz*.

<sup>119</sup>343 U.S. 747 (1952).

upon the presence or absence of a trespass,<sup>120</sup> which doctrine was specifically overruled by *Katz*.

Further indulging its penchant for taking comfort in things unsaid, the Government sees it as significant that Mr. Justice Douglas and Mr. Justice Brennan, concurring jointly, did not disassociate themselves from Mr. Justice White's observation concerning *Hoffa*, *Lopez*, *Osborn*, and *On Lee*, although they did attack one other aspect of his concurring opinion. If one is disposed to pursue this kind of reasoning and if one reads far enough, the reason why neither Mr. Justice Douglas nor Mr. Justice Brennan thought it necessary to reply to Mr. Justice White becomes pluperfectly clear. Mr. Justice Douglas dissented vigorously from the Court's decisions in *Hoffa*, *Lopez*, *Osborn*, and *On Lee*; he would have found a violation of the Fourth Amendment in each case. Mr. Justice Brennan dissented vigorously and at length in *Lopez*; he would have found a violation of the Fourth Amendment there. Simply stated, Mr. Justice Douglas and Mr. Justice Brennan saw no reason for special comment on a footnote in a concurring opinion because they fully concurred in the majority opinion and their complete disagreement with the thesis voiced by Mr. Justice White was a matter long of record.

With characteristic disdain for truth and accuracy, the Government tells this Court that: "It is *significant* that the Supreme Court has declined to review *numerous holdings* by federal and state courts which have *held that Katz does not apply to recordings or overhearings made with the consent of one party to the conversation.*" (Emphasis added.)<sup>121</sup> The truth is that four<sup>122</sup> of the five

<sup>120</sup> 343 U.S. at 751.

<sup>121</sup> Brief for Appellant at 16.

<sup>122</sup> *United States v. Leighton*, 386 F.2d 822 (2d Cir. 1967), cert. denied, 390 U.S. 1025 (1968); *Fountain v. United States*, 384 F.2d 624 (5th Cir. 1967), cert. denied sub nom. *Marshall v. United States*, 390 U.S. 1005 (1968); *Frugé v. State*, 251 La. 283, 204 So.2d 287 (1967), cert. denied, 391 U.S. 912 (1968); *Jones v. California*, \_\_\_ Cal. App. 2d \_\_\_, \_\_\_ P.2d \_\_\_, 62 Cal. Rptr. 304 (1967), cert. denied, 390 U.S. 980 (1968).



cases cited as being illustrative of the just-quoted proposition were decided *before* the Supreme Court handed down *Katz*. Accordingly, it was necessarily impossible for those courts even to have considered *Katz*, much less to have *held* that *Katz* was *inapplicable*. The fifth case<sup>123</sup> was decided per curiam and does not mention *Katz*. That Court considered that its decision was controlled by its decision in *Dancy v. United States*.<sup>124</sup> *Dancy* is a singularly unenlightening decision, and although *Katz* is mentioned therein, there is not even the barest exegesis of the reasoning which led the Court to conclude that *Katz* did not require the suppression of evidence obtained by the Government when its agents overheard a conversation between the defendant and an informer by means of an electronic transmitter hidden on the body of the informer.<sup>125</sup>

Finally, the Government pleads that the rule of *Katz* not be applied "retroactively"<sup>126</sup> in this case because "[t]he government's action was lawful when done."<sup>127</sup> This very argument, however,

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<sup>123</sup>*Hansford v. United States*, 390 F.2d 373 (5th Cir.), cert. denied, 391 U.S. 915 (1968).

<sup>124</sup>390 F.2d 370 (5th Cir. 1968).

<sup>125</sup>But see the dissent of Fahy, J., sitting by designation. 390 F.2d at 371-373. Judge Fahy would have suppressed the evidence on the authority of *Katz*.

<sup>126</sup>Brief for Appellant at 20. Properly speaking, of course, the practice of applying (or not applying) Supreme Court decisions retroactively is confined to situations involving cases already tried. That is, if a given Supreme Court decision was to be applied retroactively, it would have the effect of undoing the decision of a lower court. See e.g., *Fuller v. Alaska*, 393 U.S. 80 (1968). Plainly though, Jones has not yet been tried and if *Katz* is applied here, it will be applied prospectively.

<sup>127</sup>Brief for Appellant at 20. What the government really complains of is the fortuitous passage of time and the intervening decision in *Katz*. But if the passage of time, and with it, the happening of *Katz*, rebounds to Jones' benefit, it should also be noted that it is only the passage of time, and with it the enactment of Section 1301(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 237 [1968]), that makes the Government's

was squarely rejected in *Katz* and is therefore wholly without merit. The Supreme Court said:

"The government urges that, because its agents relied upon the decisions in *Olmstead* and *Goldman*, and because they did not more here than they might properly have done with prior judicial sanction, we should retroactively validate their conduct. *That we cannot do.*" (Emphasis added.)<sup>128</sup>

Accordingly, *Katz* is fully applicable here and requires the suppression of evidence as directed by the District Court.

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appeal herein possible. Section 1301(a) amended 18 U.S.C. § 3731 and provides for appeals by the United States from District Courts to a Court of Appeals—

"From an order, granting a motion for return of seized property or a motion to suppress evidence, made before the trial of a person charged with a violation of any law of the United States, if the United States attorney certifies to the judge who granted such motion that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of the charge pending against the defendant".

Prior to that enactment, the Government would not have had the right to appeal the District Court's decision and order suppressing the evidence of the monitored conversations. *DiBella v. United States*, 369 U.S. 121 (1962); *Carroll v. United States*, 354 U.S. 394 (1957); *Application of Leahy*, 298 F.2d 233 (9th Cir. 1958); *United States v. Koenig*, 290 F.2d 166 (5th Cir. 1961) *aff'd sub nom. DiBella v. United States*, 369 U.S. 121 (1962); *United States v. Apex Distrib. Co.*, 270 F.2d 747 (9th Cir. 1959); *United States v. Wheeler*, 256 F.2d 745 (3rd Cir.), *cert. denied*, 358 U.S. 913 (1958); *Nelson v. United States*, 93 U.S. App. D.C. 14, 208 F.2d 505, *cert. denied*, 346 U.S. 827 (1953).

<sup>128</sup>389 U.S. at 356.

## III

THE SUPPRESSION OF EVIDENCE MANUFACTURED BY  
THE GOVERNMENT AND SMACKING OF ENTRAPMENT  
IS A PROPER AND APPROPRIATE EXERCISE OF THE  
COURT'S SUPERVISORY POWERS OVER THE ADMINIS-  
TRATION OF CRIMINAL JUSTICE

Quite apart from the failure of the Government to obtain a warrant for its eavesdropping activities, and the lack of consent by Bromley, the District Court ruled that this evidence must be suppressed in the exercise of the Court's supervisory powers over the administration of criminal justice. Judge Gesell did so because he found that this evidence was manufactured by the Government to provide corroboration for the testimony of Bromley, in order that the Government might make a perjury case against the defendant.<sup>129</sup>

The Court stated:

"The Government interceptions were undertaken at the instance and urging of the Government primarily to get an essential element of proof of the perjury offense, that is, to manufacture corroboration."<sup>130</sup>

This finding was entirely justified and indeed unavoidable in view of the evidence presented at the hearing. The Government's own witnesses established: that Mrs. Kaufman simply reported to Bromley Jones' testimony before the grand jury, that Bromley indicated his disappointment that Jones had not contacted him directly, that Jones called Bromley and told him in more detail what his testimony had been, that Bromley did not indicate any disagreement with Jones' recollection of the transaction in question, and that when the conversation ended neither party expected the other to

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<sup>129</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 16-19, *appeal docketed*, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>130</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 18, *appeal docketed*, No. 22529, D.C. Cir., Nov. 29, 1968.

call back. The Government's own witnesses also established that the Government attorneys had on several occasions discussed with Bromley and Sandground the possibility of monitoring calls from Bromley to other persons in the case, that it was the Government attorneys who decided to have Bromley call Jones back while they monitored the call, that it was the Government attorneys who instructed Bromley to lie to Jones in the monitored call, that it was the Government attorneys who suggested that Bromley call Baker and Jones to set up a meeting in Los Angeles while they monitored the calls, and that it was the Government attorneys who instructed Bromley to attend this meeting as a walking transmitter for the Government.

Furthermore, the Government is responsible for the part played by its informer Bromley in this affair. As the Supreme Court said in *Sherman v. United States*, cited by the District Court, "the government cannot disown Kalchinian and insist it is not responsible for his actions. Although he was not being paid, Kalchinian was an active government informer . . ." <sup>131</sup> See also *Hansford v. United States* <sup>132</sup> and *Johnson v. United States*. <sup>133</sup> Bromley's "Ivins attempts to make Jones incriminate himself" <sup>134</sup> in the monitored call destroy the Government's claim that all the Government was doing here was "giving a suspect the opportunity to reveal himself." <sup>135</sup>

The transcript of this call and the seven later calls also make it clear that it was Bromley and the Government attorneys who took the initiative in this entire affair. One thing is certain from the

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<sup>131</sup> 356 U.S. 369, 373 (1958).

<sup>132</sup> 112 U.S. App. D.C. 359, 303 F.2d 219 (1962) (en banc).

<sup>133</sup> 115 U.S. App. D.C. 63, 317 F.2d 127 (1963).

<sup>134</sup> *United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 6, appeal docketed, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>135</sup> Brief for Appellant at 30.

record: Had it not been for the instigation of the Government attorneys, the return call from Bromley and the meeting in Los Angeles would never have occurred and this evidence would not exist, for it is "the product of the creative activity" of the Government.<sup>136</sup> The Government did not merely monitor these events, it staged them for the sole purpose of obtaining evidence. As the Court states: "This goes too far. It borders on entrapment."<sup>137</sup>

In the portion of its brief directed to the Court's exercise of its supervisory powers, the Government abandons all pretense of arguing on the basis of the facts found by the District Court. In particular, its argument conveniently ignores the main thrust of the Court's discussion, i.e., its finding that the evidence in question was manufactured by the Government. Instead the Government falls back on its old unsupported claims, based solely on the presumption of the guilt of the accused, a presumption which has characterized the Government's prosecution of this case from its inception. Thus, after gratuitously asserting that Jones had committed perjury before the grand jury, the Government states that "he had sent an emissary to Bromley on that date to report the nature of his false testimony with the obvious intent that Bromley would back up that false story and hamper the investigation of the affairs of both Baker and Jones."<sup>138</sup> The short answer to these gossamer claims strewn about so freely by the Government is that the Government was given an opportunity at the hearing to back up its claims with facts and could not do so.

The court's statement that the activity of the Government in this case "borders on entrapment" is fully supported in the record. Had the Government indicted Jones on a charge of obstructing justice, the other charge it was apparently considering at the time it

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<sup>136</sup>*Sherman v. United States*, 356 U.S. 369, 372 (1958).

<sup>137</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 18-19, *appeal docketed*, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>138</sup>Brief for Appellant at 28.

was manufacturing the evidence against him,<sup>139</sup> the record of this hearing would make out a classic case of entrapment. Instead the Government has turned its case around and indicted Jones for perjury with the expressed intention of using its ill-gotten evidence as corroboration for the testimony of Bromley.

However, what the Government attorneys did here is no less reprehensible whether the Government attempts to use this evidence to prove a charge of obstructing justice or to corroborate a charge of perjury. The Government simply cannot be permitted to use this manufactured evidence at all in a court of law.

The Government must be "estopped by sound public policy" from using such evidence. *Sorrells v. United States*.<sup>140</sup> What the court in *Sorrells* said of evidence obtained by entrapment is equally applicable here. To convict where the evidence against the accused is manufactured by the Government is "so shocking to the sense of justice" that it is "the duty of the court to stop the prosecution in the interest of the government itself, to protect it from the illegal conduct of its officers and to preserve the purity of its courts."<sup>141</sup> The "requirements of the highest public policy in the maintenance of the integrity of administration"<sup>142</sup> preclude the enforcement of the perjury statute by such means as this. Such enforcement would be "abhorrent to the sense of justice."<sup>143</sup>

The Government purports to question the "legal or constitutional basis"<sup>144</sup> upon which the exercise of the Court's supervisory powers rests. In *Sorrells v. United States*,<sup>145</sup> cited by the Court,

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<sup>139</sup>Gov't Exs. 3 and 9.

<sup>140</sup>287 U.S. 435, 445 (1932).

<sup>141</sup>287 U.S. at 446.

<sup>142</sup>287 U.S. at 448.

<sup>143</sup>287 U.S. at 449.

<sup>144</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 27, appeal docketed, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>145</sup>287 U.S. 435 (1932).



Justice Roberts in a concurring opinion joined by Justices Brandeis and Stone, stated the basis of the doctrine of entrapment as follows:

"The doctrine rests, rather, on a fundamental rule of public policy. *The protection of its own functions and the preservation of the purity of its own temple belongs only to the court. It is the province of the court and of the court alone to protect itself and the government from such prostitution of the criminal law. The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the court no matter by whom or at what stage of the proceedings the facts are brought to its attention.* Quite properly it may discharge the prisoner upon a writ of habeas corpus. Equally well may it quash the indictment or entertain and try a plea in bar. But its powers do not end there. *Proof of entrapment, at any stage of the case, requires the court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty.* If in doubt as to the facts it may submit the issue of entrapment to a jury for advice. But whatever may be the finding upon such submission the power and the duty to act remain with the court and not with the jury." (Emphasis added.)<sup>146</sup>

In *Sherman v. United States*,<sup>147</sup> Justice Frankfurter, joined by Justices Douglas, Harlan, and Brennan, concurring in the result, stated:

"The courts refuse to convict an entrapped defendant, not because his conduct falls outside the proscription of the statute, but because, even if his guilt be admitted, the methods employed on behalf of the Government to bring about conviction cannot be countenanced. As Mr. Justice Holmes said in *Olm-*

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<sup>146</sup>287 U.S. at 457.

<sup>147</sup>356 U.S. 369 (1958).

stead v. United States, 277 U.S. 438, 470, 48 S.Ct. 564, 575, 72 L.Ed. 944 (Dissenting), in another connection, 'It is desirable that criminals should be detected, and to that end that all available evidence should be used. It also is desirable that the government should not itself foster and pay for other crimes, when they are the means by which the evidence is to be obtained. [F]or my part I think it a less evil that some criminals should escape than that the government should play an ignoble part.' Insofar as they are used as instrumentalities in the administration of criminal justice, *the Federal courts have an obligation to set their face against enforcement of the law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods by effectuating them. They do this in the exercise of a recognized jurisdiction to formulate and apply 'proper standards for the enforcement of the federal criminal law in the federal courts,'* McNabb v. United States, 318 U.S. 332, 341, 63 S.Ct. 608, 613, 87 L.Ed. 819, *an obligation that goes beyond the conviction of the particular defendant before the court. Public confidence in the fair and honorable administration of justice, upon which ultimately depends the rule of law, is the transcending value at stake.*" (Emphasis added.)<sup>148</sup>

As the Supreme Court said in *McNabb v. United States*,<sup>149</sup>

"[A] decent regard for the duty of courts as agencies of justice and custodians of liberty forbids that men should be convicted upon evidence secured under the circumstances revealed here."<sup>150</sup>

The Court not only found the conduct of the Government attorneys objectionable because the evidence in question was manu-

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<sup>148</sup>356 U.S. at 380.

<sup>149</sup>318 U.S. 332 (1943).

<sup>150</sup>318 U.S. at 347.



factured, but also because of the improper use made of a member of the bar in obtaining evidence. Bromley was placed in a position of having to produce "the goods" on Jones or face indictment himself, and the transcript of the monitored call shows the extent to which Bromley went to do the Government's dirty work.

The statement in the Government's brief that "the prosecution was 'overreaching' only according to the Court's personal canons, rather than general standards of decency drawn from the current state of the law"<sup>151</sup> is incredible. Apparently the Government is of the opinion that there has been a deterioration in the standards of decency, or what the Court refers to in its opinion as "elementary standards of fairness"<sup>152</sup> applicable in the Federal courts, to the extent that the Government can now manufacture evidence against an accused and have it admitted in court to obtain a conviction. As Judge Gesell states, "in good conscience this cannot be permitted."<sup>153</sup>

In *Boyd v. United States*,<sup>154</sup> the Supreme Court handed down the famous mandate: "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon . . ."<sup>155</sup> If the Justice Department itself no longer has a conscience, a citizen has no protection against encroachments on his constitutional rights except the conscience and personal canons of a judge. It will be a dark day for the Constitution and the American people when a federal judge is willing to ignore the dictates of his own conscience and swallow his personal canons of ethics to do the bidding of the Government.

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<sup>151</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 30, *appeal docketed*, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>152</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 17, *appeal docketed*, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>153</sup>*United States v. Jones*, Criminal No. 40-66 (D.D.C., Sept. 30, 1968) at 16, *appeal docketed*, No. 22529, D.C. Cir., Nov. 29, 1968.

<sup>154</sup>116 U.S. 616 (1886).

<sup>155</sup>116 U.S. at 635.

The District Court's exercise of its supervisory powers to suppress this evidence manufactured by the Government should be affirmed by this Court.

#### CONCLUSION

The decision of the District Court suppressing the evidence obtained by surreptitious electronic surveillance is fully supported in fact and law. Accordingly, the decision of the District Court should be affirmed.

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